

Rhythm Energy, Inc v V3 Capital Group, LLC
2025 NY Slip Op 32575(U)
June 30, 2025
Supreme Court, New York County
Docket Number: Index No. 653122/2023
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48-----X
RHYTHM ENERGY, INC and RHYTHM OPS, LLC,

Plaintiffs,

- v -

V3 CAPITAL GROUP, LLC, V3 COMMODITIES GROUP,
LLC, and COLBECK CAPITAL MANAGEMENT, LLC,Defendants.
-----XINDEX NO. 653122/2023

MOTION DATE _____

MOTION SEQ. NO. 008**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 008) 125, 126, 127, 128,
129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141were read on this motion to/for JUDGMENT - DEFAULT.

In motion seq. no. 08, plaintiffs move, pursuant to CPLR 3215(a), to strike the answer of defendants V3 Capital Group, LLC and V3 Commodities Group, LLC (V3 Defendants) and for a default judgment against them. The motion is unopposed.

On February 8, 2025, the court granted Davis+Gilbert LLP's, counsel for the V3 Defendants, motion to withdraw as counsel. (NYSCEF 117, Decision and Order [mot. seq. no. 007].) In its decision and order, the court stated that "[c]orporate defendants can only appear by counsel" and warned that "[i]f corporate defendants fail to appear by counsel, it may constitute a default." (*Id.* at 1-2.) To date, the V3 Defendants have failed to retain new counsel. A corporate defendant's failure to retain counsel, as required by CPLR 321, is a ground for default. (*Mail Boxes Etc. USA, Inc. v Higgins*, 281 AD2d 176 [1st Dept 2001].)

To demonstrate entitlement to a default judgment, plaintiff must submit "(1) proof of service of the summons and complaint; (2) proof of the facts constituting its claim;

and (3) proof of the defendant's default in answering or appearing.” (*Medina v Sheng Hui Realty LLC*, 2018 NY Misc LEXIS 1789, 2018 WL 2136441, *6-7 [Sup Ct, NY County 2018] [citations omitted].) “CPLR 3215 (f) requires that an applicant for a default judgment file proof by affidavit made by the [moving] party of the facts constituting the claim.” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70 [2003].) The movant may, however, file a “verified complaint instead of the affidavit when the complaint has been properly served” and, because “the [movant] does not have the benefit of discovery, the affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists.” (*Id.* at 70-71.) Here, plaintiffs have provided proof of service. (NYSCEF 133, Affs of Service.)

In support of their claims for a declaratory judgment and breach of contract, plaintiffs submit the affidavit of Predrag Popovic, plaintiffs’ founder and CEO, who affirms the existence of a funding agreement between the parties, plaintiffs’ performance under the agreement, the V3 Defendants’ breach, and damages incurred, including a contractual right to attorneys’ fees. (NYSCEF 138, Popovic aff ¶¶ 2-5, 13-14, 9-12, 17-23.) Popovic also affirms that, upon termination of the parties’ funding agreement, the V3 Defendants were obligated to release any liens on plaintiffs’ property. (*Id.* ¶ 24.) Plaintiffs needed the liens released in order to obtain other financing. (*Id.* ¶ 27.) The V3 Defendants refused to release the liens unless plaintiffs entered into an agreement to release all claims against the V3 Defendants. (*Id.* ¶ 28.) Thus, plaintiffs were forced to enter a general release in order to obtain funding from other sources to protect their business. (*Id.* ¶ 29.) Finally, the V3 Defendants are in default for failure to retain counsel. (*Mail Boxes Etc. USA, Inc.*, 281 AD2d 176.)

While plaintiffs have sufficiently submitted proof that the V3 Defendants breached the funding agreement and that the general release was obtained under duress, voiding such, they have not submitted sufficient proof of the amount of damages owed. Thus, this issue, as well as the determination of the amount of reasonable attorneys' fees owed, is referred to a Special Referee.

Accordingly, it is

ORDERED that plaintiffs motion for a default judgment is granted; and it is

ADJUDGED and DECLARED that the general release Rhythm signed was obtained under economic duress and therefore is void; and it is further

ORDERED that a Judicial Hearing Officer or Special Referee shall be designated to hear and report on the following issue, which is hereby submitted to the JHO/Special Referee for such purpose: the amount of damages owed to plaintiffs, including the amount of reasonable attorneys' fees; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SPR), which, in accordance with the Rules of that Part, shall assign this matter at the initial appearance to an available JHO/Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and plaintiff's counsel shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail (spref@nycourts.gov) an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk

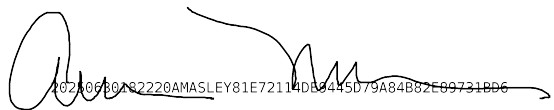
shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar in the Special Referees Part; and it is further

ORDERED that, on the initial appearance in the Special Referees Part, the parties shall appear for a pre-hearing conference before the assigned JHO/Referee to address any outstanding discovery limited to the issue of damages and the date of the hearing to determine damages and attorneys' fees shall be fixed at that conference; the parties need not appear at the initial conference with witnesses and evidence; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses; accordingly, and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and Special Referees and by filing the same with NYSCEF; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts.



6/30/2025

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

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CASE DISPOSED

GRANTED

☐

DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

☐

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN