

<b>AFC Agent LLC v JG HoldCo LLC</b>
2026 NY Slip Op 31064(U)
March 17, 2026
Supreme Court, New York County
Docket Number: Index No. 652644/2025
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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AFC AGENT LLC	<b>INDEX NO.</b>	<u>652644/2025</u>
Plaintiff,		
- v -	<b>MOTION DATE</b>	<u>07/10/2025, 01/23/2026</u>
JG HOLDCO LLC,	<b>MOTION SEQ. NO.</b>	<u>002 003</u>
Defendant.		

**DECISION + ORDER ON MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 41, 42, 43  
 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79  
 were read on this motion to/for MISCELLANEOUS.

Upon the foregoing documents, the Defendant’s motion (Mtn. Seq. No. 002) to dismiss is DENIED.

Simply put, the Defendant in this case is not entitled to dismissal based on the preliminary injunction issued by the United States District Court for the District of New Jersey (Zahid N. Quraishi, J.) and the court’s (the **NJ Federal Court**) findings “*for the limited purposes of this motion*” (NYSCEF Doc. No. 27 at 16-17, 24; NYSCEF Doc. No. 26) that the borrower had demonstrated a likelihood of success that, among other things, (i) the lender breached the Reopening Agreement (not the borrower), (ii) the obligation to deliver financial statements was waived, and (iii) the conduct of Tim Bossidy (which the NJ Federal Court attributed to the

lender, not the borrower [NYSCEF Doc. No. 27 at 29]), caused the failure to obtain the required certificate of occupancy.

The granting or denial of a motion for a preliminary injunction does not constitute an adjudication on the merits. It is a provisional remedy designed to maintain the status quo rather than conclusively resolve legal disputes (*Ratner v Fountains Clove Rd.-Apartments, Inc.*, 118 AD2d 843 [2d Dept 1986]; see *JY Not So Common L.P. v P&R Bronx, LLC*, 79 Misc 3d 626, 630 [Sup Ct, Bronx County 2023] and *Trustco Bank v. Pearl Mont Commons, LLC*, 55 Misc 3d 371, 375 [Sup Ct, Schenectady County 2016]; *Moore v Ruback's Grove Campers' Ass'n, Inc.*, 85 AD3d 1220, 1221 [3d Dept 2011]; *Lackey v Stinnie*, 604 US 192 [2025]). As such, dismissal based on the preliminary injunction is simply not appropriate.

Although JG HoldCo LLC (**HoldCo**) was subsequently added as a plaintiff to the lawsuit pending in the NJ Federal Court, the Defendant is also not entitled to dismissal based on CPLR 3211(a)(4). However, HoldCo is not wrong that the preliminary injunction granted by the NJ Federal Court is significant. Of course, it is. Thus, while dismissal is inappropriate at this stage, the Defendant may well be entitled to a stay of this litigation pending adjudication by the NJ Federal Court on the issue as to whether there has been an underlying borrower default.

The motion (Mtn. Seq. No. 003) seeking to compel is DENIED without prejudice as premature. The Plaintiff simply does not meet its burden in demonstrating that the Defendant is refusing to engage in proportionate discovery warranting an order compelling discovery at this time. On the record before the Court, the Defendant in this case does not object to engage in discovery. The

search terms (and the revised search terms) provided by the Plaintiff have produced too many hits. The Plaintiff simply has not properly explained why the search terms proposed by the Defendant are inadequate and the parties do not appear to have met and conferred to bridge any perceived gap in the Defendant's proposed search terms. In any event, the record is not sufficiently developed as to the scope of any actual disagreement, and the parties are directed to meet and confer. The branch of the motion seeking sanctions is also DENIED without prejudice.

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

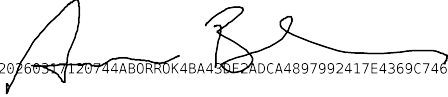
Accordingly, it is hereby ORDERED that HoldCo's motion (Mtn. Seq. No. 002) to dismiss is DENIED; and it is further

ORDERED that HoldCo is ORDERED to file an answer within 20 days of this Decision and Order; and it is further

ORDERED that HoldCo is granted leave to move by Order to Show Cause to seek a stay of this action pending adjudication of the lawsuit pending the NJ Federal Court; and it is further

ORDERED that the branch of AFC Agent LLC's motion (Mtn. Seq. No. 003) seeking to compel responses to certain of AFC Agent LLC's First Requests for Production and First Set of Interrogatories is DENIED without prejudice as premature; and it is further

ORDERED that the branch of AFC Agent LLC’s motion (Mtn. Seq. No. 003) seeking attorneys’ fees and costs is DENIED without prejudice.

  
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3/17/2026

DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE