

**Rhythm Energy, Inc. v V3 Capital Group, LLC**

2024 NY Slip Op 31013(U)

March 26, 2024

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

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RHYTHM ENERGY, INC. and RHYTHM OPS, LLC,  Plaintiffs,  - v -  V3 CAPITAL GROUP, LLC, V3 COMMODITIES GROUP, LLC, and COLBECK CAPITAL MANAGEMENT, LLC,  Defendants.	<table border="0"> <tr> <td><b>INDEX NO.</b></td> <td><u>653122/2023</u></td> </tr> <tr> <td><b>MOTION DATE</b></td> <td><u>N/A</u></td> </tr> <tr> <td><b>MOTION SEQ. NO.</b></td> <td><u>002 003</u></td> </tr> </table> <p style="text-align: center;"><b>DECISION + ORDER ON MOTION</b></p>	<b>INDEX NO.</b>	<u>653122/2023</u>	<b>MOTION DATE</b>	<u>N/A</u>	<b>MOTION SEQ. NO.</b>	<u>002 003</u>
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<b>MOTION DATE</b>	<u>N/A</u>						
<b>MOTION SEQ. NO.</b>	<u>002 003</u>						

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 31, 33, 46  
 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 25, 26, 27, 28, 32, 34, 45  
 were read on this motion to/for DISMISS.

This is a breach of contract action between plaintiffs Rhythm Energy, Inc. and Rhythm Ops, LLC, which provide clean energy to consumers in Texas, and defendants V3 Capital Group, LLC and V3 Commodities Group, LLC (collectively V3) which in July 2021, entered a loan agreement to provide working capital to plaintiffs. (NYSCEF Doc. No. [NYSCEF] 1, Complaint ¶¶1, 2, 18.) Plaintiffs allege that V3 failed to satisfy its funding obligation when they admittedly ran out of funds because defendant Colbeck Capital Management, LLC (Colbeck) stopped funding V3. (*Id.* ¶¶27-28.) Instead, when plaintiffs terminated the contracts due to V3’s breaches, V3 refused to provide lien releases upon plaintiffs’ payment of the outstanding amount unless plaintiffs agreed to release V3’s earlier breaches. (See *id.* ¶¶3-4, 7.) Plaintiffs could not get the funding to

pay off V3 unless V3 agreed to comply with its obligations under the contracts, but V3 indicated that it would not comply. (See *id.* ¶49.)

In the first cause of action against V3, plaintiffs seek a declaratory judgment to void the release and the amendment to the ISDA Master Agreement which impermissibly added an early termination fee of \$300,000 when it was V3 which first breached. (See *id.* ¶57.) In the second cause of action, plaintiffs allege breach of contract against V3. (*Id.* ¶¶62-68.) In the third cause of action against V3, plaintiffs assert breach of the covenant of good faith and fair dealing for (1) demanding a release of the earlier breaches without any contractual right, (2) delaying the payoff letter and lien releases which interfered with plaintiffs refinancing, and (3) charging an early termination fee after V3 had admittedly breached and plaintiffs seek punitive damages. (*Id.* ¶¶69-74.) In the fourth cause of action against Colbeck, plaintiffs allege a claim for tortious interference with contract. (*Id.* ¶¶75-80.)

V3 seeks to dismiss the complaint based on the release.<sup>1</sup> For the reasons stated on the record on March 14, 2024, V3's motion is denied. Plaintiffs have stated claims for economic duress, breach of contract and breach of the covenant of good faith and fair dealing. Plaintiffs also allege that the release was "improperly obtained." (*Newin Corp. v Hartford Acc. & Indem. Co.*, 37 NY2d 211, 217 [1975].) V3 has not established that plaintiffs had a viable legal recourse. A lawsuit for breach of contract for failing to fund and for anticipatory breach for refusing to release the liens upon payment without a release of the original breaches might not have been a viable option. (See *Austin Instrument, Inc. v Loral Corp.*, 29 NY2d 124, 133 [1971] [after trial, the court held "[i]t is

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<sup>1</sup> V3's motion is limited to the release.

hardly necessary to add that Loral's normal legal remedy of accepting Austin's breach of the contract and then suing for damages would have been inadequate under the circumstances"], *rearg denied* 29 NY2d 749 [1971].)

For the reasons stated on the record on March 14, 2024, Colbeck's motion is granted.

Accordingly, it is

ORDERED that V3 Capital Group, LLC and V3 Commodities Group, LLC's motion sequence 002 to dismiss is denied; and it is further

ORDERED that Colbeck Capital Management, LLC's motion sequence 003 to dismiss is granted and the complaint is dismissed in its entirety as against this defendant, with costs and disbursements to this defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of this defendant; and it further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for Colbeck Capital Management, LLC shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the

*Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases*

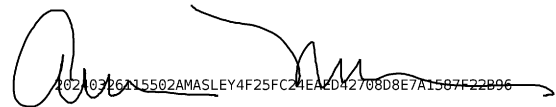
(accessible at the “E-Filing” page on the court’s website); and it is further

ORDERED that defendants shall submit the transcript to be so ordered; and it is further

ORDERED that V3 Capital Group, LLC and V3 Commodities Group, LLC shall answer by April 12, 2024; and it is further

ORDERED that V3 Capital Group, LLC and V3 Commodities Group, LLC shall submit a proposed PC order or competing orders if they cannot agree by April 19, 2024. The court will inform the parties if a conference is necessary; and it is further

ORDERED that the parties are directed to mediation. The court shall issue a mediation order or the parties are welcome to engage in private mediation.



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3/26/2024  
DATE

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ANDREA MASLEY, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
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