

**AJB Capital Invs., LLC v EZRaider Co.**

2025 NY Slip Op 34231(U)

November 5, 2025

Supreme Court, New York County

Docket Number: Index No. 652643/2025

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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AJB CAPITAL INVESTMENTS, LLC,  
  
Plaintiff,

INDEX NO. 652643/2025

MOTION DATE \_\_\_\_\_

- v -

EZRAIDER CO., MOSHE AZARZAR, and JOHN DOES  
NOS. 1-10,

MOTION SEQ. NO. 002

Defendants.

**DECISION + ORDER ON  
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for JUDGMENT - DEFAULT.

In motion sequence 002, plaintiff moves, pursuant to CPLR 3215, for a default judgment against defendants EZRaider Co. and Moshe Azarzar for failure to appear, answer, or otherwise respond to the verified complaint.

“On a motion for a default judgment under CPLR 3215 based upon a failure to answer the complaint, a plaintiff demonstrates entitlement to a default judgment against a defendant by submitting: (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 WL 2136441, \*6-7 [Sup Ct, NY County 2018] [citations omitted].) “Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action. The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts.” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994] [citations omitted].)

In support of its motion, plaintiff submits the affidavit of Simeon Wohlberg, plaintiff's Managing Member. (NYSCEF 16, Wohlberg aff ¶ 1.) The complaint is also verified by Wohlberg. (NYSCEF 2, Verified Complaint at 14.)

#### Proof of Service

Plaintiff submits proof of service that both defendants were personally served. (NYSCEF 6 & 7, Affs of Service.) Plaintiff also complied with the additional service requirements of CPLR 3215(g)(3) by serving defendants with a copy of the summons and complaint via first-class mail. (NYSCEF 17, Uretsky aff ¶¶ 4, 7; NYSCEF 7, Aff of Service at 1 ["On Mon, Jul 07 2025 , service was completed by mailing a true copy of the above stated document(s) to the subject's above stated address, in a First Class postpaid properly addressed envelope marked 'Personal and Confidential'"].)

#### Proof of Facts

CPLR 3215 (f) requires a plaintiff to submit "proof of the facts constituting the claim, the default and the amount due . . . by affidavit made by the party." As previously stated, plaintiff submits the Wohlberg's affidavit. In this action, plaintiff seeks damages for breach of promissory note (against EZRaider Co.), fraud (against Azarzar), contractual legal fees (against EZRaider Co.), and tortious interference with contract (against Azarzar).

#### *Breach of Note*

Wohlberg avers that on June 8, 2022, EZRaider Co. executed a promissory note (Note) with a principal amount of \$880,000. (NYSCEF 16, Wohlberg aff ¶ 4.) EZRaider Co. executed the Note in connection with a Securities Purchase Agreement (SPA). (*Id.*)

On December 8, 2022, all principal and interest<sup>1</sup> became due on the Note (Maturity Date). (*Id.* ¶ 5.) EZRaider Co. failed to pay the amounts owed on the Maturity Date, constituting an Event of Default under Section 3 of the Note. (*Id.* ¶ 10; NYSCEF 4, Note at 14.) Following the Maturity Date, plaintiff received a series of checks from Azarzar, which bounced upon presentation to the bank. (*Id.* ¶¶ 11-12.) To date, EZRaider Co. remains in default. (*Id.* ¶ 13.) Plaintiff has submitted sufficient proof of its claim for breach of contract against EZRaider Co.

#### *Fraudulent Misrepresentation*

Wohlberg avers that Azarzar, founder and owner of EZRaider Co., made false representations to plaintiff regarding the filing of EZRaider Co.'s quarterly and yearly reports and that the company had never been late on such filings. (*Id.* ¶¶ 21, 22, 27.) Based on this misrepresentation, plaintiff provided the \$880,000 in funding. (*Id.* ¶¶ 29-31.) Wohlberg states that Azarzar made this false representation with the intent to “dupe” plaintiff out of \$880,000 and with the intent to never repay plaintiff pursuant to the Note. (*Id.* ¶¶ 31-33.)

“[W]here the plaintiff pleads that it was induced to enter into a contract based on the defendant's promise to perform and that the defendant, at the time it made the promise, had a preconceived and undisclosed intention of not performing the contract, such a promise constitutes a representation of present fact collateral to the terms of the contract and is actionable in fraud. (*Manas v VMS Assoc., LLC*, 53 AD3d 451, 453 [1st Dept 2008] [internal quotation marks and citations omitted].) However, “general

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<sup>1</sup> The Note provides for a guaranteed interest rate of 12% per annum from June 8, 2022 and a default interest rate of 18% per annum on any unpaid amounts after an Event of Default. (NYSCEF 16, Wohlberg aff ¶¶ 5-6; NYSCEF 4, Note at 1.)

allegations that defendants entered into a contract while lacking the intent to perform it” are insufficient to support a claim of fraud. (*Id.* at 454 [internal quotation marks and citations omitted].) Here, the allegations in the verified complaint, even when supplemented by Wolhberg’s general statement that Azarzar had no intent to repay the money, are insufficient.

Further, “[c]auses of action for breach of contract and fraud based on the breach of a duty separate from the breach of the contract are designed to provide remedies for different species of damages: the damages recoverable for a breach of contract are meant to place the nonbreaching party in as good a position as it would have been had the contract been performed.” (*Id.* [internal quotation marks and citations omitted].) Any damages recoverable for fraudulent inducement are meant to indemnify plaintiff for the loss suffered through that inducement such as lost opportunities. (*Id.*) Here, plaintiff fails to allege that it sustained any damages that would not be recoverable for breach of the Note. Thus, this cause of action is also duplicative of the breach of contract cause.

#### *Tortious Interference with Contract*

To prove a claim for tortious interference with contract, plaintiff must show (1) the existence of a valid contract; (2) defendant’s knowledge of the contract; (3) defendant’s intentional procurement of the third-party’s breach without justification; (4) actual breach of the contract; and (5) damages caused by breach of the contract. (*Lama Holding Co. v Smith Barney*, 88 NY2d 413, 424 [1996].) “To establish a corporate officer’s liability for inducing a breach of a contract between the corporation and a third party, the complaint must allege that the officers ... acts were taken outside the scope of their employment

or that they personally profited from their acts.” (*Hoag v Chancellor*, 246 AD2d 224, 228 [1st Dept 1998] [internal quotation marks and citations omitted].)

“[A] cause of action seeking to hold corporate officials personally responsible for the corporation's breach of contract is governed by an enhanced pleading standard. Generally, we have construed such a standard to require a particularized pleading of allegations that the acts of the defendant corporate officers which resulted in the tortious interference with contract either were beyond the scope of their employment or, if not, were motivated by their personal gain, as distinguished from gain for the corporation. We have construed personal gain in terms that the challenged acts were undertaken with malice and were calculated to impair the plaintiff's business for the personal profit of the individual defendant.” (*Petkanas v Kooyman*, 303 AD2d 303, 305 [1st Dept 2003] [internal quotation marks and citations omitted].)

Here, the complaint is devoid of any allegations of malice by Azarzar. Further, Wohlberg's conclusory statement that Azarzar induced EZRaider Co. to breach the Note for his personal gain is not enough remedy this pleading defect and insufficient to show proof of claim. (See NYSCEF 16, Wohlberg aff ¶ 55.)

#### *Attorneys' Fees*

Section 3 of the Note provides that plaintiff is entitled to attorneys' fees if it prevails in an action to enforce any provisions of the Note. (NYSCEF 4, Note at 19.) Thus, plaintiff is entitled to reimbursement of attorneys' fees by EZRaider Co. The issue of attorneys' fees is severed and referred to a referee.

#### Proof of Default

Plaintiff's counsel avers that “[m]ore than 30 days have passed since service of the Complaint. EZRaider Co. has not answered, appeared, or otherwise responded to the Complaint.” (NYSCEF 17, Uretsky aff ¶ 5.)

Accordingly, it is

ORDERED that the plaintiff's motion for a default judgment is granted in part as to defendant EZRaider Co. and denied as to defendant Moshe Azarzar; and it is further,

ORDERED that plaintiff is directed to submit a proposed judgment to the court detailing the calculations of the \$1.4 million in damages with interest it seeks. Plaintiff shall submit the proposed judgment in MS Word and e-file a copy; and it is further

ORDERED that the issue of the amount attorneys' fees owed to plaintiff by EZRaider Co. is severed; and it is further

ORDERED that a Judicial Hearing Officer (JHO) or Special Referee shall be designated to hear and report to this court on the following issue:

- (1) the amount of the reasonable value of legal services of plaintiff's counsel to be reimbursed by defendant EZRaider Co. to plaintiff except that, in the event of and upon the filing of a stipulation of the parties, as permitted by CPLR 4317, the Special Referee, or another person designated by the parties to serve as Referee, shall determine the aforesaid issues; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

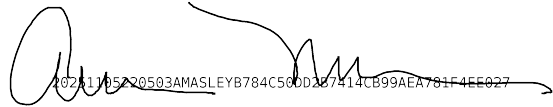
ORDERED that this matter is hereby referred to the Special Referee Clerk for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that parties shall immediately consult one another and counsel shall, within 15 days from the date of this Order, submit to the Special Referee 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 of the Special Referees Part; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special 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.



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11/5/2025  
DATE

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ANDREA MASLEY, J.S.C.

CHECK ONE:

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

<input 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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