

Amenity Analytics, Inc. v Magnifi, LLC

2026 NY Slip Op 30333(U)

January 28, 2026

Supreme Court, New York County

Docket Number: Index No. 651528/2025

Judge: Lyle E. Frank

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

AMENITY ANALYTICS, INC.

Plaintiff,

- v -

MAGNIFI, LLC,

Defendant.

-----X

INDEX NO. 651528/2025
MOTION DATE 09/12/2025
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 29

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Upon the foregoing documents, the motion is denied.¹

I. Background

This action concerns allegations by Plaintiff, Amenity Analytics, Inc., wherein Defendant, Magnifi, LLC, is said to have breached a software licensing agreement by failing to make the payments due under the agreement. Defendant alleges that, though Plaintiff did deliver software, it was completely nonfunctional for the purpose it was intended and therefore Plaintiff is not entitled to payment.

Before the Court is Plaintiff’s motion for summary judgment. Defendant argues that summary judgment cannot be granted at this juncture because of the lack of discovery and because there is a dispute of fact regarding whether Defendant gave adequate notice that the software Plaintiff delivered was nonfunctional. Plaintiff argues no discovery is necessary and that the notice provided was inadequate.

¹ The Court would like to thank Special Master to the Court, Jason Lowe, Esq. for his assistance in this matter.

II. Motion for Summary Judgment Standard

Under CPLR § 3212, a party may move for summary judgment and the motion “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” CPLR § 3212(b). Once the movant makes a showing of a prima facie entitlement to judgment as a matter of law, the burden then shifts to the opponent to “produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 (2016). The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

III. Analysis

Initially, Plaintiff’s motion for summary judgment must be denied because there has been no discovery and essential facts necessary to oppose a motion for summary judgment are in Plaintiff’s possession. When it appears that facts essential to justify opposition to a motion for summary judgment may exist but cannot be stated by the nonmoving party, the court may deny the motion. CPLR § 3212(f).

Defendant has identified facts which are in Plaintiff’s possession that could corroborate its statement that the software did not work. For instance, Plaintiff could be in possession of communications regarding whether the software was working, communications with other customers regarding the functionality of the software, and updates made to the software due to complaints about it not working.

Further, the moving affirmations Plaintiff relies on state that the affiant gained some of their knowledge through a review of unnamed books and records, which is not proper. *Deutsche*

Bank Nat'l Tr. Co. v. Elshiekh, 179 A.D.3d 1017, 1021, 118 N.Y.S.3d 183, 187 (2nd Dept. 2020)(“[T]he affidavits of Reyes and Garcia were insufficient to establish the plaintiff’s prima facie entitlement to summary judgment. Both affiants based their assertions upon their review of unspecified business records without attaching or otherwise incorporating any such business records to their affidavits.”) In addition, Plaintiff fails to explain why Defendant would not be entitled to have these books and records in discovery.

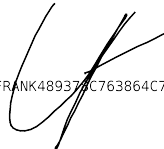
Additionally, summary judgment must be denied at this juncture because there is not an adequate record before the Court regarding whether Defendant rejected the software as nonconforming in a timely manner. The parties agree that Courts have treated software purchase contracts as contracts for the sale of goods covered by the U.C.C. See, e.g., *Richard A. Rosenblatt & Co. v. Davidge Data Sys. Corp.*, 295 A.D.2d 168 (1st Dep’t 2002). Pursuant to NY U.C.C. § 2-714(1), a party is entitled to damages due to the fact a good does not function as agreed. See UCC § 2-714(1) (“Where the buyer has accepted goods and given notification (subsection (3) of Section 2-607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller’s breach as determined in any manner which is reasonable.”) Further, a party has a right to reject nonconforming goods. NY U.C.C. § 2-601.

Plaintiff argues that pursuant to NY U.C.C. § 2-602(1), a rejection of goods “must be within a reasonable time after their delivery or tender.” Though this is the case, since there is an inadequate record regarding the timeline of delivery of the goods to alleged reject of the goods, the Court cannot grant summary judgment at this time.

The parties dispute whether a disclaimer of warranties clause in the agreement is valid. Since the Court is denying Plaintiff’s motion for summary judgment based on the above, the Court does not need to resolve whether the disclaimer of warranties is valid at this time.

Accordingly, it is hereby

ADJUDGED that the motion for summary judgment is denied in its entirety, without prejudice.

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LYLE E. FRANK, J.S.C.

1/28/2026
DATE

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