

AFF V Mountaineer, LLC v Genenbacher
2026 NY Slip Op 31705(U)
April 19, 2026
Supreme Court, New York County
Docket Number: Index No. 656682/2025
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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AFF V MOUNTAINEER, LLC,

Plaintiff,

- v -

CALE GENENBACHER, LOGE HOLDINGS LLC, and
RADIFY FUND 2023 LP,

Defendants.

INDEX NO. 656682/2025

MOTION DATE _____

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27

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

In motion sequence 001, plaintiff AFF V Mountaineer, LLC (AFF) moves for an order:

“(a) pursuant to CPLR 3215, granting a default judgment against defendants Cale Genebacher, Loge Holdings, LLC and Radify Fund 2023 LP ([d]efendants’) on [p]laintiff’s causes of action for Breach of Contract (Count One of the Complaint) and Breach of Good Faith and Fair Dealing (Count Two of the Complaint) as a result of [d]efendants’ failure to respond to the Complaint;

(b) awarding damages in [p]laintiff’s favor and against [d]efendants totaling \$4,633,024.19 as of February 15, 2026 (consisting of outstanding principal of \$3,457,618.65, interest from January 15, 2026 through February 15, 2026 totaling \$73,762.53, unused fees of \$7,055.51, exit fees of \$37,396.61 and minimum interest owed totaling \$1,057,189.89), plus interest thereon following February 15, 2026 until the date of judgment at a per diem of \$2,305.08 (i.e., per day), plus post-judgment interest thereon at the lawful rate, pursuant to Counts One and Two of the Complaint (except for legal fees and costs to be separately sought and awarded); [and]

(c) pursuant to CPLR 3212(e), severing [p]laintiff’s remaining claims and causes of action, including Count Three of the Complaint, together with [p]laintiff’s claims for additional damages, legal fees and costs of suit, and directing the subsequent entry of further separate judgment against [d]efendant for such sums.” (NYSCEF Doc. No. [NYSCEF] 8, Notice of Motion.)

On March 13, 2026, the motion was withdrawn against defendant Lodge Holdings LLC. (NYSCEF 25, Stipulation.) Thereafter, on March 16, 2026, the motion was similarly withdrawn against defendant Cale Genenbacher. (NYSCEF 27, Stipulation.) The motion proceeds against defendant Radify Fund 2023 LP (Radify). The motion is unopposed.

“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].)

Proof of Service

Plaintiff submits proof that Radify was served with the summons and complaint on January 13, 2026, by personal delivery upon Mary Elleen Paul, an individual designated to accept service upon behalf of the limited partnership. (NYSCEF 5, Aff of Service.)

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.” Here, plaintiff submits the affirmation of Michelle Fowler, an authorized representative of plaintiff.

(NYSCEF 9, Fowler aff.) Therein, Fowler sets forth that on July 19, 2024, plaintiff and Radify entered into a Construction Loan and Security Agreement (Loan Agreement) with respect to a loan from plaintiff to Radify. (*Id.* ¶¶ 4-5.) The Loan Agreement provides that “[i]f [Radify] fails to make any payment of interest or principal within five (5) days of (and including) the date on which the same is due (excluding any payment due on the Maturity Date), [Radify] shall pay to [plaintiff] a late charge on such past due amount, as liquidated damages and not as a penalty, equal to ten percent (10%) of such amount, but not in excess of the maximum amount of interest allowed by applicable law.” (*Id.* ¶ 13.)

On April 25, 2025, plaintiff notified Radify that an event of default “has occurred and is continuing”. (*Id.* ¶ 15.) On September 19, 2025, plaintiff declared all liabilities under the Loan Agreement “due and payable.” (*Id.* ¶ 16.) Radify has failed to pay. (*Id.* ¶ 17.) “[T]he amounts due and owing . . . totaled \$4,633,024.19 as of February 15, 2026 (consisting of outstanding principal of \$3,457,618.65, interest from January 15, 2026 through February 15, 2026 totaling \$73,762.53, unused fees of \$7,055.51, exit fees of \$37,396.61 and minimum interest owed totaling \$1,057,189.89), plus interest thereon following February 15, 2026 at a per diem of \$2,305.08 (i.e., per day), plus legal fees, costs and all other sums due pursuant to the Loan Documents.” (*Id.* ¶ 23.)

The court finds that plaintiff has submitted sufficient proof of its claims.

Proof of Default

Radify has not answered or otherwise appeared in this action. (NYSCEF 9, Fowler aff ¶ 25; NYSCEF 17, Schafhauser aff ¶ 9.)

Accordingly, it is

ORDERD that motion sequence 001 is granted as to defendant Radify Fund 2023 LP in the absence of opposition; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff AFF V Mountaineer, LLC and against defendant Radify Fund 2023 LP, in the amount of \$4,633,024.19 of which \$3,457,618.65 is the outstanding principal, \$73,762.53 is the accrued interest from January 15, 2026 through February 15, 2026, \$7,055.51 is unused fees, \$37,396.61 is exit fees, and \$1,057,189.89 is minimum interest owed, and the Clerk of the Court is directed to calculate the amount of interest due on the principal balance at the rate of \$2,305.08 per day from February 15, 2026, through the date of judgment in the amount of \$_____, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the issue of the amount of attorneys' fees owed is severed, and that a Judicial Hearing Officer (JHO) or Special Referee shall be designated to hear and report to this court on the reasonable value of legal services of AFF's counsel to be reimbursed by Radify to AFF; 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 Barnes & Thornburg LLP 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

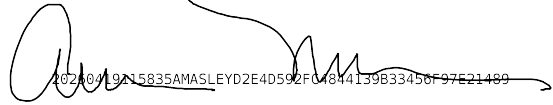
ORDERED that on the initial appearance in the Special Referees Part the parties shall appear for a pre-hearing conference before the assigned JHO/Special Referee and the date for the hearing shall be fixed at that conference; the parties need not appear at the conference with all witnesses and evidence; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) 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/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; and it is further

ORDERED that plaintiff's remaining claims and causes of action are severed and shall proceed against the remaining defendants.



4/19/2026

DATE

ANDREA MASLEY, 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