SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

Parque Solar Don Jose S.A. de C.V. v. Enel S.P.A.

2025 NY Slip Op 06819 · No. Index No. 656415/23; Appeal Nos. 5329-5330-5331; Case Nos. 2024-07648, 2025-00525, 2025-02563 · Decided December 9, 2025

SUMMARY

The New York Appellate Division, First Department, modified a judgment dismissing the plaintiffs' amended complaint by reinstating their claim for breach of guarantees and otherwise affirmed. The court held that the guarantees were ambiguous regarding the timing of payment demands and whether claims could be collected after expiration, while affirming dismissal of the implied covenant claim for insufficient allegations supporting veil piercing.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Webber, J.P.; Scarpulla, J.; Friedman, J.; Rodriguez, J.; Chan, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	December 9, 2025
DOCKET	Index No. 656415/23; Appeal Nos. 5329-5330-5331; Case Nos. 2024-07648, 2025-00525, 2025-02563
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed from a judgment and orders dismissing claims for breach of guarantees and breach of the implied covenant of good faith and fair dealing. Defendant cross-appealed. The Appellate Division modified the judgment to reinstate the guarantee-breach cause of action, affirmed the judgment otherwise, and dismissed the appeals from the orders as subsumed in the appeals from the judgment.
PRECEDENTIAL VALUE	published
PARTIES	Parque Solar Don Jose S.A. de C.V., Villanueva Solar, S.A. de C.V., Parque Solar Villanueva Tres, S.A. de C.V. v. Enel S.P.A.

TOPICS

contract interpretation · contracts · construction law · corporate veil piercing · appellate procedure

PRACTICE AREAS

contract law · construction law · commercial litigation · corporate law · appellate procedure

QUESTIONS PRESENTED

1. Whether the guarantee-breach claim was properly dismissed where the guarantees were ambiguous regarding when plaintiffs had to demand payment during the pending arbitration and whether payment could be collected after expiration of the guarantees.
2. Whether plaintiffs' demands and assignments, together with powers of attorney and trust-beneficiary status, gave them standing to pursue claims under the guarantees.
3. Whether plaintiffs sufficiently pleaded a breach of the implied covenant of good faith and fair dealing or facts supporting piercing the corporate veil.

HOLDINGS

1. The guarantee-breach cause of action should not have been dismissed because the guarantees were ambiguous, and the court could not conclude that plaintiffs were required to demand payment from Enel while the arbitration against the contractor subsidiary was pending.
2. Assuming the demands were timely, plaintiffs' demands were sufficient under the guarantees, and plaintiffs had standing to pursue the claims based on their status as named beneficiaries, the powers of attorney granted by the trustees, and their status as secondary beneficiaries; in any event, the amended complaint was also brought by assignees and their trustees.
3. The claim for breach of the implied covenant of good faith and fair dealing was properly dismissed with prejudice because plaintiffs alleged only that Enel owned a majority of the contractor subsidiary's stock and that the subsidiary was thinly capitalized, without alleging disregard of corporate formalities, commingling of funds, fraudulent transfers, or comparable veil-piercing facts.

KEY QUOTATIONS

> *"The subject agreements are susceptible to more than one reading, each of which present inconsistencies with other provisions, and are therefore ambiguous"* ([*1])

> *"Consequently, the claim for breach of the guarantees should not have been dismissed at this stage."* ([*1])

> *"Plaintiffs' claim for breach of the implied covenant of good faith and fair dealing was properly dismissed."* ([*1])

FACTUAL BACKGROUND

Plaintiffs operated solar-energy facilities in Mexico and entered into construction contracts with an Enel subsidiary, whose performance obligations were guaranteed by Enel S.P.A. After an alleged failure to meet the contracts' Guaranteed Performance Ratio, an ICC arbitration awarded plaintiffs liquidated damages and interest against the contractor subsidiary. When the subsidiary did not pay, plaintiffs demanded payment from Enel under the guarantees; Enel refused, asserting that the demand period had expired, and plaintiffs commenced the action.

PROCEDURAL HISTORY

Supreme Court, New York County, dismissed the amended complaint, including the guarantee-breach claim and the implied-covenant claim. The Appellate Division held that the guarantee claim was improperly dismissed at that stage because the guarantees were ambiguous and reinstated it, while affirming dismissal of the implied-covenant claim.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reinstate the cause of action for breach of the guarantees and proceed with that claim; the judgment was otherwise affirmed. The appeals from the specified orders were dismissed as subsumed in the appeals from the judgment.

CASES CITED

- Alden Global Value Recovery Master Fund, L.P. v. KeyBank N.A., 159 A.D.3d 618, 625 (1st Dep't 2018)
- Fitzpatrick Intl. Ltd. v. Republic of Equatorial Guinea, 2013 WL 5964560, at *3 (S.D. Tex. Oct. 7, 2013) (No. H-12-1300)
- Besser v. Miller, 12 A.D.3d 1118, 1119 (4th Dep't 2004)
- International Credit Brokerage Co. v. Agapov, 249 A.D.2d 77, 78 (1st Dep't 1998)

OPINION

PER CURIAM.

Parque Solar Don Jose S.A. de C.V. v Enel S.P.A. (2025 NY Slip Op 06819) Parque Solar Don Jose S.A. de C.V. v Enel S.P.A. 2025 NY Slip Op 06819 Decided on December 09, 2025 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: December 09, 2025 Before: Webber, J.P., Scarpulla, Friedman, Rodriguez, Chan, JJ. Index No. 656415/23|Appeal No. 5329-5330-5331|Case No. 2024-07648 2025-00525 2025-02563| [*1]Parque Solar Don Jose S.A. de C.V., etc., et al, Plaintiffs-Appellants-Respondents, v Enel S.P.A., Defendant-Respondent-Appellant. Latam & Watkins LLP, Washington, DC (Michael E. Bern of the bar of the District of Columbia, admitted pro hac vice, of counsel), for appellants-respondents.

Gibson, Dunn & Crutcher LLP, New York (Gabriel Herrmann of counsel), for respondent-appellant. Judgment, Supreme Court, New York County (Melissa A. Crane, J.), entered April 10, 2025, dismissing the amended complaint, unanimously modified, on the law, to reinstate the cause of action for breach of the guarantees, and otherwise affirmed, without costs. Appeals from order, same court and Justice, entered on or about December 3, 2024, which granted defendant's motion to dismiss the cause of action for breach of the guarantees, and granted its motion to dismiss the cause of action for breach of the covenant of good faith and fair dealing without prejudice, and from an order, same court and Justice, entered on or about January 7, 2025, which dismissed plaintiffs' claim for breach of the implied covenant of good faith and fair dealing, unanimously dismissed, without costs, as subsumed in the appeals from the judgment.

Plaintiffs Parque Solar Don Jose S.A. de C.V., Villanueva Solar, S.A. de C.V, and Parque Solar Villanueva Tres, S.A. de C.V. (collectively, plaintiff facilities) are operators of solar energy facilities in Mexico. [FN1] Plaintiff facilities were created by defendant Enel S.P.A., a multinational energy company based in Italy. Each plaintiff facility entered into a substantially identical contract with a fourth Enel subsidiary, Kino Contractor, S.A (the contractor subsidiary) in which the contractor subsidiary agreed to engineer, procure materials for, and construct three solar energy facilities.

Defendant provided each of the plaintiff facilities with a guarantee of the contractor subsidiary's obligations to perform under the construction contracts. Plaintiffs contend that the facilities failed to meet the "Guaranteed Performance Ratio" under the construction contracts.

After the contractor subsidiary denied plaintiff facilities' request for payment and subsequent negotiations were unsuccessful, plaintiffs pursued arbitration in the ICC. The ICC issued a ruling in favor of plaintiffs and found that the contractor subsidiary owed plaintiff facilities liquidated damages plus interest. When the contractor subsidiary did not respond to plaintiffs' payment demand, plaintiffs sent a letter to defendant demanding payment pursuant to Section 4 of the guaranties.

Defendant refused to pay, claiming that the demand period had expired, and plaintiffs then commenced this proceeding. The subject agreements are susceptible to more than one reading, each of which present inconsistencies with other provisions, and are therefore ambiguous (see Alden Global Value Recovery Master Fund, L.P. v KeyBank N.A., 159 AD3d 618, 625 [1st Dept 2018]).

As a result, we cannot conclude that plaintiffs were required to make a demand for payment under the guarantees while the arbitration proceeding with contractor subsidiary was pending, because section 4.1 of the guarantees can be interpreted as excusing any requirement to make demand against defendant while the dispute resolution process is ongoing. At the same time, defendant raises whether plaintiffs can collect under the guarantees after they have expired.

Consequently, the claim for breach of the guarantees should not have been dismissed at this stage. Plaintiffs' demands, assuming they were timely, were sufficient under the guarantees. Plaintiffs, defendant's former subsidiaries, were defined in each of the respective guarantees as the "beneficiary" therein; the fact that they had assigned certain rights was irrelevant, because the trustees granted each of them a power of attorney to pursue the claims (see Fitzpatrick Intl.

Ltd. v Republic of Equatorial Guinea, 2013 WL 5964560, *3 [SD Tex Oct. 7, 2013, No. H-12-1300]). Moreover, the power of attorney and plaintiffs' status as secondary beneficiaries of their respective trusts conferred on plaintiffs standing to bring the claims (see Besser v Miller, 12 AD3d 1118, 1119 [4th Dept 2004]).

In any event, the amended complaint is brought not only by defendant's former subsidiaries, with which they entered into the guarantees, but also by their assignees and the assignees' trustees. Plaintiffs' claim for breach of the implied covenant of good faith and fair dealing was properly dismissed. Plaintiffs failed to allege anything more than that defendant owned the majority of its contractor subsidiary's stock and that the subsidiary was thinly capitalized.

There were no allegations of disregard of corporate formalities, commingling of funds, fraudulent transfers, or other factors to support piercing the corporate veil (see International Credit Brokerage Co. v Agapov, 249 AD2d 77, 78 [1st Dept 1998]).

To the extent there is any question whether the claim for breach of the implied covenant of good faith and fair dealing was dismissed with prejudice, the court made clear that it was so dismissed. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: December 9, 2025 Footnotes Footnote 1: In connection with a financing agreement, plaintiff facilities assigned their rights under the construction contracts and guarantees to three plaintiff trusts.

PER CURIAM.

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