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

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reversed_and_remanded
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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)

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