

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

Veolia Energy North America Holdings, Inc. v. Enwave West Coast
Holdings, LLC

2026 NY Slip Op 03414 · No. Index No. 651265/24; Appeal No. 6760; Case No. 2025-01665 · Decided June 2,
2026

SUMMARY

The Appellate Division, First Department unanimously affirmed dismissal of breach-of-contract and declaratory-judgment claims arising from a purchase and sale agreement. The court held that the purchaser defendants satisfied the agreement's commercially reasonable efforts requirement by offering a renewal on terms comparable to the existing operations and maintenance agreement, and that they were independently permitted to reject the proposed renewal under another contractual provision. The court also upheld dismissal of the claim seeking to hold guarantor defendants jointly and severally liable for the contingent payment.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Moulton, J.P.; Kapnick, J.; González, J.; Shulman, J.; Chan, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	June 2, 2026
DOCKET	Index No. 651265/24; Appeal No. 6760; Case No. 2025-01665
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendants' motion to dismiss, with prejudice, the causes of action for breach of contract and declaratory judgment.
STANDARD OF REVIEW	On a motion to dismiss, the court determined whether the complaint and documentary evidence stated a legally sufficient claim; because the contract supplied a clear objective benchmark, the commercially reasonable efforts issue could be resolved as a matter of law rather than requiring a fact-specific inquiry.
PRECEDENTIAL VALUE	Published appellate decision

PARTIES

Veolia Energy North America Holdings, Inc. v. Enwave West Coast Holdings, LLC, Guarantor defendants

TOPICS

breach of contract

contract interpretation

conditions precedent

commercial litigation

preservation of error

PRACTICE AREAS

Contracts

Commercial litigation

New York appellate procedure

QUESTIONS PRESENTED

1. Whether the purchaser defendants breached the PSA's requirement to use commercially reasonable efforts to obtain renewal of the Venetian O&M Agreement by offering a 10-year renewal rather than the five-year term preferred by Venetian.
2. Whether the purchaser defendants satisfied the PSA's conditions precedent permitting them to reject renewal terms they deemed commercially unacceptable after consultation and reasonable mitigation efforts.
3. Whether the declaratory-judgment claim seeking joint and several liability of guarantor defendants for the End Date Contingent Payment was properly dismissed.
4. Whether plaintiff preserved its argument that the PSA had a full 20-year term.

HOLDINGS

1. The purchaser defendants did not breach the PSA because their offer of a 10-year renewal matched the term of the Venetian O&M Agreement existing when the PSA was negotiated and therefore satisfied the objective benchmark supplied by section 5.13(a).
2. A commercially reasonable efforts issue need not invariably be treated as fact-specific; it may be decided on a motion to dismiss when the contract provides a clear objective benchmark.
3. The purchaser defendants satisfied the applicable conditions precedent, and section 5.13(d) independently permitted them to reject Venetian's proposed five-year renewal terms as commercially unacceptable.
4. The declaratory-judgment cause of action seeking to hold the guarantor defendants jointly and severally liable for the End Date Contingent Payment was properly dismissed with prejudice.
5. The court declined to consider plaintiff's argument that the PSA had a full 20-year term because plaintiff failed to preserve the argument.

KEY QUOTATIONS

*"The purchaser defendants cannot have breached an obligation to exercise commercially reasonable efforts to obtain a renewal on the terms of the existing agreement by offering exactly those terms" (*2)*

*“Here, where the plain terms of the PSA provide a clear benchmark for “commercially reasonable efforts,” it is appropriate to decide the matter on a motion to dismiss.” (*2)*

FACTUAL BACKGROUND

The parties' 2017 purchase and sale agreement required the purchaser defendants to pay a base price and an End Date Contingent Payment, subject to reduction if they did not renew a Venetian operations-and-maintenance agreement. The agreement required the purchasers to use commercially reasonable efforts to obtain a renewal with a substantially similar scope of services and terms no less favorable to the customer than the existing agreement. The purchasers offered Venetian's parent a 10-year renewal, matching the term of the agreement in effect when the PSA was negotiated, but Venetian preferred a five-year term. The purchasers communicated why the shorter term was commercially unacceptable and offered to mitigate its impact by adjusting the contractual earnout structure.

PROCEDURAL HISTORY

Veolia brought an action arising from a 2017 purchase and sale agreement, alleging that purchaser defendants failed to use commercially reasonable efforts to renew a Venetian operations-and-maintenance agreement and thereby avoided an End Date Contingent Payment. Supreme Court, New York County, granted defendants' motion to dismiss the breach-of-contract and declaratory-judgment claims with prejudice. The Appellate Division, First Department, unanimously affirmed to the extent appealed from.

DISPOSITION

affirmed

CASES CITED

- Vista Eng'g Corp. v Everest Indem. Ins. Co., 161 AD3d 596, 598 [1st Dept 2018]
- JFK Holding Co. LLC v City of New York, 21 NY3d 722, 727 [1st Dept 2013]
- Iberdrola Energy Projects v Oaktree Capital Mgt. L.P., 231 AD3d 33, 40 [1st Dept 2024]
- Atlas MF Mezzanine Borrower, LLC v Macquarie Texas Loan Holder LLC, 174 AD3d 150, 165 [1st Dept 2019]
- McHale v Anthony, 41 AD3d 265, 266-267 [1st Dept 2007]