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

Arena Vantage SPV, LLC v. Actionable Process LLC

2026 NY Slip Op 02722 (Appellate Division of the Supreme Court of the State of New York First Department 2026) · No. Index No. 654396/24; Appeal No. 6505; Case No. 2025-00817 · Decided April 30, 2026

SUMMARY

The Appellate Division, First Department modified an order denying defendants' motions to dismiss by dismissing the breach-of-contract claim against the Deal Agent, while otherwise affirming. The court held that the loan agreement gave the Deal Agent discretion concerning enforcement actions and imposed no mandatory, non-discretionary obligation alleged to have been breached. It upheld the breach-of-contract claim against the guarantors and the claim for breach of the implied covenant of good faith and fair dealing.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Kennedy, J.P.; Gesmer, J.; González, J.; Rosado, J.; Chan, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	April 30, 2026
DOCKET	Index No. 654396/24; Appeal No. 6505; Case No. 2025-00817
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from an order denying defendants' motions to dismiss claims for breach of contract against the guarantors and Deal Agent and for breach of the implied covenant of good faith and fair dealing.
PRECEDENTIAL VALUE	Published New York Appellate Division decision; currently uncorrected and subject to revision.
PARTIES	Actionable Process LLC, et al., including CoVenture—Vantage Credit Opportunities GP, LLC v. Arena Vantage SPV, LLC

TOPICS

breach of contract · implied covenant of good faith · contract interpretation · commercial litigation · appellate procedure

PRACTICE AREAS

contract law · commercial litigation · appellate procedure

QUESTIONS PRESENTED

1. Whether the complaint stated a breach-of-contract claim against the Deal Agent based on its failure to take enforcement action after an alleged default.
2. Whether the complaint stated a breach-of-contract claim against the guarantors under the loan agreement's unconditional guaranty provisions.
3. Whether the breach-of-the-implied-covenant claim was duplicative of the breach-of-contract claims.

HOLDINGS

1. The complaint failed to state a breach-of-contract claim against the Deal Agent because the loan agreement did not impose a mandatory, nondiscretionary obligation requiring the Deal Agent to take the requested enforcement action.
2. The complaint stated a breach-of-contract claim against the guarantors because the loan agreement unconditionally and irrevocably guaranteed payment of principal and interest and did not restrict enforcement to collective action by the lenders.
3. The breach-of-the-implied-covenant claim was not duplicative of the breach-of-contract claims because the complaint alleged separate conduct that deprived plaintiff of the benefit of its bargain.

KEY QUOTATIONS

> *"Since the complaint fails to allege that the Deal Agent violated any mandatory, non-discretionary obligation under the loan agreement, it fails to state a cause of action for breach of contract by the Deal Agent"* ([*1])

> *"The obligations of the Guarantors under this Article X shall be unconditional and absolute."* ([*2])

FACTUAL BACKGROUND

The dispute arose under a loan agreement involving a borrower, guarantors, lenders, and CoVenture—Vantage Credit Opportunities GP, LLC as Deal Agent. After an alleged borrower default, plaintiff asserted that the Deal Agent was required to take enforcement action, sued the guarantors for payment under their guaranties, and asserted claims for breach of the implied covenant of good faith and fair dealing.

PROCEDURAL HISTORY

Supreme Court, New York County, denied the challenged portions of defendants' motions to dismiss. The Appellate Division modified the order to grant the motion dismissing the breach-of-contract claim against the Deal Agent and otherwise affirmed.

DISPOSITION

other

CASES CITED

- IKB Intl., S.A. v. Wells Fargo Bank N.A., 40 NY3d 277, 285 (2023)
- Frank B. Hall & Co. of N.Y. v. Orient Overseas Assoc., 48 NY2d 958, 959 (1977)
- AEA Middle Mkt. Debt Funding LLC v. Marblegate Asset Mgt., LLC, 214 AD3d 111, 133 (1st Dept. 2023)
- Credit Agricole Corporate v. BDC Fin., LLC, 135 AD3d 561, 561 (1st Dept. 2015)
- Botbol v. Frosch Intl. Travel Inc., 222 AD3d 471, 472 (1st Dept. 2023)

OPINION

Arena Vantage SPV, LLC v. Actionable Process LLC 2026 NY Slip Op 02722
PER CURIAM.
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(Edward Flanders of counsel), for respondent.</p> </div> [*1] <p>Order, Supreme Court, New York County (Andrew J. Borrok, J.), entered on or about January 22, 2025, which, to the extent appealed from, denied so much of defendants' motions as sought to dismiss the second cause of action for breach of contract against defendant guarantors and the third cause of action for breach of contract against defendant CoVenture — Vantage Credit Opportunities GP, LLC (Deal Agent), and the fourth cause of action for breach of the implied covenant of good faith and fair dealing as against all defendants, unanimously modified, on the law, to grant the motion as to the third cause of action for breach of contract against Deal Agent, and otherwise affirmed, without costs.</p> <p>Although Supreme Court correctly concluded that the loan agreement precluded plaintiff from asserting a breach of contract cause of action against the borrower, we disagree with the court's conclusion that the plaintiff stated a claim against the Deal Agent, because nothing in the loan agreement affirmatively requires the Deal Agent to take enforcement action designed to protect what plaintiff perceives to be in its own best interest. Pursuant to paragraph 9.1(a) of the loan agreement, the Deal Agent's obligations upon default are limited to those expressly set forth in the loan agreement. Section 7.2 of the loan agreement provides that the Deal Agent "[m]ay with the consent of the Required Lenders, or at the direction of the Required Lenders shall" take certain remedial action in the event of default. Section 9.1 (c) of the loan agreement provides that the Deal Agent "shall take such action with respect to such Event of Default . . . as may be requested by the Required Lenders, or as the Deal Agent shall deem advisable or in the best interest of the Lenders." It is undisputed that the Required Lenders have not directed the Deal Agent to take any action. The loan agreement gives the Deal Agent discretion to determine whether an action is "advisable or in the best interest of the Lenders." Since the complaint fails to allege that the Deal Agent violated any mandatory, non-discretionary obligation under the loan agreement, it fails to state a cause of action for breach of contract by the Deal Agent (<i>see IKB Intl., S.A. v Wells Fargo Bank N.A.</i>, 40 NY3d 277, 285 [2023]).</p> [*2] <p>The same cannot be said, however, with respect to plaintiff's breach of contract action against the guarantors. Section 10.1 of the loan agreement provides that "each Guarantor hereby unconditionally and irrevocably guarantees to the Lenders, the due and punctual payment of . . . principal of and interest on" the amounts outstanding under the loan agreement. In the event the borrower failed to make the guaranteed payment, "each Guarantor hereby unconditionally agrees to make such payment . . . as if such payment were made by the Borrower." Section 10.2 reiterates this point by stating that "[t]he obligations of the Guarantors under this Article X shall be unconditional and absolute." Unlike the provision governing the Deal Agent, nothing in this section restricts recovery by the lenders on the guaranty to collective action. We can assume from the difference in the language employed between the two sections that the parties intended that the lenders could severally seek to enforce the agreement (<i>see generally Frank B. Hall & Co. of N.Y. v Orient Overseas Assoc.</i>, 48 NY2d 958, 959 [1977]).</p> <p>Supreme Court correctly found that plaintiff's cause of action for breach of the implied covenant of good faith and fair dealing was

not duplicative of the breach of contract claims, as the "complaint alleges conduct that is separate from the conduct constituting the alleged breach of contract and such conduct deprived the other party of the benefit of its bargain" (<i>AEA Middle Mkt. Debt Funding LLC v Marblegate Asset Mgt., LLC</i>, 214 AD3d 111, 133 [1st Dept 2023]). This is true even though, as we find here, the Deal Agent did not violate the terms of the loan agreement by failing to take the enforcement action sought by plaintiff (<i>see Credit Agricole Corporate v BDC Fin., LLC</i>, 135 AD3d 561, 561 [1st Dept 2015]), and even though some of the allegations overlap (<i>see Botbol v Frosch Intl. Travel Inc.</i>, 222 AD3d 471, 472 [1st Dept 2023]).</p> <p>We have considered the remaining arguments and find them unavailing.</p> <p>THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. </p> <p>ENTERED: April 30, 2026</p> </div> <div> <footer> <div> <p>Court Decisions</p> All Court Decisions Official Reports Service Bound Volumes Decision Search </div> <div> <p>Resources</p> RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index </div> <div> <p>About</p> About the Law Reporting Bureau About our Operations Contact Us Twitter </div> <div> <p>Quick Contact Info</p> <p>17 Lodge Street</p> <p>Albany, NY 12207</p> <p>Phone: (518) 453-6900</p> </div> </footer> </div> <div> <p>Links to or from other sites do not signify endorsement or relationship with them.</p> </div> </div>
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