

**Iberdrola Energy Projects v Oaktree Capital Mgt. L.P.**

2022 NY Slip Op 34775(U)

April 1, 2022

Supreme Court, New York County

Docket Number: Index No. 652514/2021

Judge: Jennifer Schechter

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: COMMERCIAL DIVISION

PRESENT: HON. JENNIFER SCHECTER

PART 54

Justice

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INDEX NO. 652514/2021

IBERDROLA ENERGY PROJECTS,

MOTION SEQ. NO. 003

Plaintiff,

- v -

OAKTREE CAPITAL MANAGEMENT L.P., OAKTREE CAPITAL GROUP, LLC, OAKTREE IX SALEM HOLDINGS, LLC, HIGHSTAR CAPITAL GP IV, L.P., HIGHSTAR CAPITAL IV, L.P., HIGHSTAR CAPITAL IV-A, L.P., HIGHSTAR CAPITAL IV PRISM, L.P., HIGHSTAR CAPITAL IV PRISM AIF, L.P., FOOTPRINT MAIN BLOCKER LLC, FOOTPRINT PRISM/IV-A BLOCKER (CAYMAN), L.P., FOOTPRINT PRISM/IV-A BLOCKER, LLC, FOOTPRINT PRISM AIF BLOCKER, LLC, HIGHSTAR FOOTPRINT MAIN INTERCO LLC, HIGHSTAR FOOTPRINT PRISM IV-A INTERCO LLC, OCM-HIGHSTAR FOOTPRINT AGGREGATOR LLC, HIGHSTAR FOOTPRINT HOLDINGS GP, LLC, HIGHSTAR FOOTPRINT POWER HOLDINGS L.P., IAN SCHAPIRO, SCOTT LITMAN, ANDREW NEVIN, IAN MCLEAN, RYAN LEE, DOES 1-50,

DECISION + ORDER ON MOTION

Defendants.


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The following e-filed documents, listed by NYSCEF document number (Motion 003) 33, 34, 35, 36, 37, 38, 39, 40, 54, 55, 56, 57, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 81, 82, 83, 84, 89, 90 were read on this motion to/for DISMISS.

Plaintiff and non-party Footprint Power Salem Harbor Development LP (Footprint) arbitrated claims based on Footprint's alleged breach of their contract (Dkt. 37 [the EPC Contract]), which resulted in an award and judgment in favor of plaintiff (see Index No. 656017/2021, Dkts. 71, 83). In this action, plaintiff seeks to hold Footprint's shareholders and directors liable for Footprint's conduct based on concerns that Footprint may not be able to satisfy a judgment. However, the EPC Contract contains a non-recourse clause that precludes plaintiff from doing so. Specifically, § 18.16 provides that "no recourse for any obligation of [Footprint] hereunder, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, shareholder, officer or director" (Dkt. 37 at 106 [emphasis added]). Plaintiff's argument that defendants may not rely on § 18.16 is unavailing. "Non-recourse provisions are enforceable under New York state law" (In re Taberna Preferred Funding IV, Ltd., 594 BR 576, 588 [Bankr SDNY

2018], citing *Bronxville Knolls, Inc. v Webster Town Ctr. Partnership*, 221 AD2d 248 [1st Dept 1995]). Indeed, § 18.16 would be meaningless if it did not preclude this action. Thus, courts have sensibly permitted non-signatories to enforce similar non-recourse provisions (*Lawrence v Kennedy*, 95 AD3d 955, 958-59 [2d Dept 2012] ["the plaintiff cannot maintain this action against Kennedy, in his individual capacity, for breach of the Employment Agreement since he had no contractual relationship with Kennedy, and was not in privity with him. Moreover, the Employment Agreement contained an exculpatory clause precluding the imposition of personal liability upon Kennedy on any legal or equitable grounds based upon the Employment Agreement, which would be a bar to the plaintiff's claims against Kennedy"]; see *Simons v Cogan*, 549 A2d 300, 305 [Del 1988]; see also *ITT Corp. v Lee*, 2016 WL 447848, at \*4 [SDNY Feb. 4, 2016]). Since the parties are not in a fiduciary relationship, there is no basis not to apply the non-recourse provision (see *CWCapital Cobalt VR Ltd. v CWCapital Invs. LLC*, 195 AD3d 12, 21 [1st Dept 2021]). And while fraud claims can be exempt from an exculpatory clause (see *Kalisch-Jarcho, Inc. v City of New York*, 58 NY2d 377, 385 [1983]), plaintiff has not validly pleaded detrimental reliance (*Megaris Furs, Inc. v Gimbel Bros.*, 172 AD2d 209, 212 [1st Dept 1991] [rejecting allegation that "plaintiffs justifiably relied upon the representation by continuing to perform" because "one cannot be induced to tender a performance which is required as a part of a preexisting contractual obligation"], accord *Senarh S.A. v Morgan*, 64 AD3d 420, 421 [1st Dept 2009]; see *Bank Leumi Trust Co. of N.Y. v D'Evori Intl., Inc.*, 163 AD2d 26, 33 [1st Dept 1990] ["A party, however, cannot be defrauded into doing that which it was already legally obligated to do"]). There is no need to reach the other issues that the parties raised.

Accordingly, it is ORDERED that the motion to dismiss is GRANTED as to all defendants except Highstar Footprint Holdings GP, LLC and Highstar Footprint Power Holdings L.P. (the Debtors), against which the action is automatically stayed (see Dkt. 114), the Clerk is directed to enter judgment dismissing the amended complaint with prejudice against all defendants except the Debtors, the claims against which are hereby severed, and the action will be marked disposed with leave to restore to resolve the claims against the Debtors if and when the automatic stay is no longer in effect.

  
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4/1/2022  
 DATE

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 JENNIFER SCHECTER, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	OTHER	<input type="checkbox"/>