

CI Renewables-II LLC v Arches Solar LLC

2024 NY Slip Op 31660(U)

May 10, 2024

Supreme Court, New York County

Docket Number: Index No. 655259/2023

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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CI RENEWABLES-II LLC,	INDEX NO.	<u>655259/2023</u>
Plaintiff,	MOTION DATE	<u>12/04/2023</u>
- v -	MOTION SEQ. NO.	<u>001</u>
ARCHES SOLAR LLC, ARCHES SOLAR HOLDINGS LLC		
Defendants.	DECISION + ORDER ON MOTION	

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 12, 14, 22, 23

were read on this motion to DISMISS.

Defendants Arches Solar LLC's and Arches Solar Holdings LLC's (collectively "Arches") motion to dismiss Count II of Plaintiff CI Renewables-II LLC's ("Plaintiff") Complaint (NYSCEF 1) pursuant to CPLR 3211(a)(1) and (a)(7) is **denied**.

A. Background

Non-party CI Renewables Maryland Land Holdings and Plaintiff, as Seller, and Arches, as Buyer, entered into to a Membership Interest Purchase Agreement dated as of May 7, 2021 ("MIPA" [NYSCEF 2]). Generally, the MIPA accomplished a sale of several photovoltaic (solar) electric projects ("Projects").

Section 1.1 of the MIPA provides, in relevant part:

"Independent Engineer" means Natural Power Consultants LLC or such other independent engineer as reasonably agreed upon by Seller and Buyer.

Under the terms of the MIPA, Natural Power Consultants LLC's ("Natural Power") was to provide "Production Output" estimates to be used in calculating amounts owed under the MIPA.

Plaintiff alleges that “Arches executed an agreement with Natural Power” to provide Production Output estimates; that Natural Power’s Production Output estimates were factored into adjustments to amounts owed under the MIPA; and that “Natural Power acted as Arches agent, and all Natural Power analyses and reports were addressed to Arches, delivered to Arches, reviewed by Arches and ultimately accepted by Arches” (Cplt. ¶¶35, 37). Plaintiff alleges that Arches negligently hired, negligently supervised, and/or is vicariously liable for Natural Power’s failure to deliver accurate Production Output estimates, which allegedly resulted in damages to Plaintiff (Cplt. ¶¶54-59).

Arches moves to dismiss on the grounds that (1) the Complaint does not allege an agency relationship between Arches and Natural Power; (2) the MIPA establishes that Natural Power was not Arches’ agent; and (3) the MIPA provides that Plaintiff expressly agreed to the retention of Natural Power. The parties acknowledge that, following the filing of this motion, Arches produced a copy of its agreement with Natural Power (Opp. Brief at 10 [NYSCEF 22]; Reply Brief at 4 [NYSCEF 23]). However, that agreement has not been filed on NYSCEF and the parties have not requested to supplement the record or to convert the pending motion to a motion for summary judgment (CPLR 3211[c]).

B. Discussion

A motion to dismiss under CPLR 3211(a)(1) is appropriately granted where “the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law” (*Leon v Martinez*, 84 NY2d 83, 88 [1994]). The court may consider the plain language of the MIPA in assessing a motion pursuant to CPLR 3211(a)(1) (*Tavarez v LIC Dev. Owner, L.P.*, 205 AD3d 565, 567 [1st Dept 2022]).

“In assessing the adequacy of a complaint under CPLR 3211(a)(7), the court must give the pleading a liberal construction, accept the facts alleged in the complaint to be true and afford the plaintiff ‘the benefit of every possible favorable inference’” (*J.P. Morgan Sec. Inc. v Vigilant Ins. Co.*, 21 NY3d 324, 334 [2013] *quoting AG Capital Funding Partners, L.P. v. State St. Bank & Trust Co.*, 5 N.Y.3d 582, 591 [2005]). However, allegations that are “bare legal conclusions” or that are “inherently incredible or flatly contradicted by documentary evidence” are not sufficient to withstand a motion to dismiss (*see JFK Holding Co., LLC v. City of New York*, 68 A.D.3d 477, 477 [1st Dept. 2009] [internal citation omitted]). As is often stated, “the court must ‘determine only whether the facts as alleged fit within any cognizable legal theory’” (*Richards v. Sec. Resources*, 187 A.D.3d 452 [1st Dept. 2020], *quoting Leon*, 84 N.Y.2d at 87-88).

The MIPA, which defines Natural Power as the “Independent Engineer” (Moving Brief at 1 [NYSCEF 10]), does not conclusively refute Plaintiff’s factual allegation of an agency relationship. Though that definition might well prove relevant in determining the merits at summary judgment or trial, whether Natural Power was in fact acting as Arches’ agent and, if so, whether Arches was negligent in supervising Natural Power’s work are disputed questions that cannot be resolved on a motion to dismiss (*Bostany v Trump Org. LLC*, 73 AD3d 479, 480 [1st Dept 2010]).

* * * *

Accordingly, it is

ORDERED that Defendants’ motion to dismiss is **DENIED**; it is further

ORDERED that that the parties appear for a preliminary conference on May 21, 2024, at 10:00 a.m., with the parties circulating dial-in information to chambers at SFC-Part3@nycourts.gov in advance of the conference.¹

This constitutes the decision and order of the Court.

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JOEL M. COHEN, J.S.C.

<u>5/10/2024</u> DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE

¹ If the parties agree on a proposed preliminary conference order in advance of the conference date (consistent with the guidelines in the Part 3 model preliminary conference order, available online at <https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/Part3-Preliminary-Conference-Order.pdf>), they may file the proposed order and email a courtesy copy to chambers with a request to so-order in lieu of holding the conference.