GSPP 4575 State Rte. 69, LLC v Precision Solar Renewables LLC
2026 NY Slip Op 30044(U)
January 12, 2026
Supreme Court, New York County
Docket Number: Index No. 653944/2025
Judge: Lyle E. Frank
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART** **11M**

Justice

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INDEX NO. 653944/2025

MOTION DATE 09/05/2025

MOTION SEQ. NO. 001

GSPP 4575 STATE ROUTE 69, LLC,GSPP HILLSBORO & DUNBAR, LLC,GSPP 24658 COUNTY ROUTE 47 NORTH, LLC,GSPP 24658 COUNTY ROUTE 47 SOUTH, LLC,GSPP 1616 COUNTY ROUTE 12, LLC,GSPP 2496 LEWIS ROAD, LLC,GSPP COUNTY ROUTE 31, LLC,GSPP 4643 TWELVE CORNERS ROAD, LLC,GSPP SENTINEL HEIGHTS ROAD, LLC

Plaintiff,

- v -

PRECISION SOLAR RENEWABLES LLC,

Defendant.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the motion is granted in part.

Background

Plaintiffs are a collection of companies that each entered into an agreement with Defendant for the construction and provision of a solar power system to be installed at various sites across New York. Plaintiffs allege that once each project was completed and became operational, significant and widespread defects related to design and installation became apparent. They allege that Defendant was immediately notified of the defects due to critical safety concerns, and that Defendant has failed to remediate the defects as required under the agreements. Plaintiffs filed this underlying proceeding in June of 2025, pleading six causes of action for breach of contract, breach of express warranty, breach of implied warranty,

negligence, unjust enrichment, and professional malpractice. The same damages are being sought for all claims. Defendant now moves to dismiss claims two through six.

Standard of Review

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, "the pleading is to be liberally construed, accepting all the facts alleged in the pleading to be true and according the plaintiff the benefit of every possible inference." *Avgush v. Town of Yorktown*, 303 A.D.2d 340, 341 [2d Dept. 2003]. Dismissal of the complaint is warranted "if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." *Connaughton v. Chipotle Mexican Grill, Inc*, 29 N.Y.3d 137, 142 [2017].

A party may move for a judgment from the court dismissing causes of action asserted against them based on the fact that the pleading fails to state a cause of action. CPLR § 3211(a)(7). For motions to dismiss under this provision, "[i]nitially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law." *Guggenheimer v. Ginzburg*, 43 N.Y. 2d 268, 275 [1977].

Discussion

Defendant moves to dismiss all claims except the breach of contract claim on the grounds that they are all duplicative of the breach of contract claim. Plaintiffs oppose the motion, but in their papers have withdrawn the claim for unjust enrichment and for the breach of implied warranty. They argue, however, that the remaining claims are valid and should not be dismissed because they properly allege non-duplicative tort claims. The issue before the Court, therefore, is whether the negligence, professional malpractice, and breach of express warranty claims are

duplicative of the breach of contract claim. For the reasons that follow, the three claims asserted are duplicative of the breach of contract claim and are dismissed without prejudice.

The Negligence and Professional Malpractice Claims Must Allege an Independent Duty

Defendant moves to dismiss the negligence claim, arguing that there are no duties alleged that are independent of the relevant contractual duties, and that Plaintiffs are barred from recovering the relief sought for this claim by the economic loss doctrine.[1] In their opposition, Plaintiffs argue that they have sufficiently pled an independent duty under the catastrophic consequences theory. The general rule is that "a simple breach of contract is not to be considered a tort unless a legal duty independent of the contract itself has been violated." *Clark-Fitzpatrick, Inc. v. Long Island R. Co.*, 70 N.Y.2d 382, 389 [1987]. But the Court of Appeals has held that there may be tort liability and the imposition of a "legal duty independent of contractual obligations" in certain circumstances. *Sommer v. Federal Signal Corp.*, 79 N.Y.2d 540, 551 [1992].

Plaintiffs' complaint alleges that the solar power systems were improperly designed and installed and as a result, they have suffered losses related to remediation of the faulty units, and diminished performance output. They request money damages "arising out of the replacement and/or repair" of the units, and money damages arising out of the "failure to meet or exceed the Expected Performance Ratios." In their opposition papers, they argue that because there are safety concerns with malfunctioning solar units, an independent duty of care has arisen under the *Sommer* line of cases, applying the 'catastrophic consequences' doctrine. In *Sommer*, the Court of Appeals examined a case in which the defendant's fire detection system failed to timely detect

[1] The Court of Appeals has clarified that the "economic loss doctrine" is applicable only in the products liability context, and that this doctrine is not to be conflated with the prohibition on duplicative contract and tort claims. See *IKB Int., S.A. v. Wells Fargo Bank, N.A.*, 40 N.Y.3d 277, 290 [2023].

a fire in a midtown skyscraper and the defendant's employee failed to transmit the alarm to the fire department when it did alert. *Sommer*, at 549. In analyzing whether there are separate contractual and tort claims, the Court of Appeals has stated that crucial to the analysis is "the nature of the injury, the manner in which the injury occurred and the resulting harm." *Id*., at 552. They found that there had been tort liability independent of the relevant contract due to the failure to exercise reasonable care. *Id*.

There Have Not Been Facts Alleged Here That Constitute Catastrophic Consequences Affecting the Public Interest

Subsequent cases in the First Department have applied this holding and found that tort claims were not duplicative of contract claims when a failure to perform under a contract led to catastrophic consequences. For instance, tort liability was found when a faulty façade construction cause portions of a façade to fall into a heavily trafficked university courtyard. *Trustees of Columbia Univ. v. Gwathmey Siegal & Assocs. Architects*, 192 A.D.2d 151, 153 [1st Dept. 1993]. The First Department noted that "one of the most significant elements in determining whether the nature of the type of services rendered gives rise to a duty of reasonable care independent of the contract itself" is when the project at issue is "so affected with the public interest that the failure to perform competently can have catastrophic consequences." *Id*; *see also General Sec. Ins. Co. v. Nir*, 50 A.D.3d 489, 490 [1st Dept. 2008] (holding that there was an independent duty of reasonable care for the faulty installation of a sprinkler that led to extensive fire damage, because "the nature of the contracted-for services at issue had a significant impact on the public interest"). The First Department went on to clarify that the catastrophic consequences doctrine does not create tort liability when there is a "solely financial" injury. *Verizon N.Y., Inc. v. Optical Communications Group, Inc.*, 91 A.D.3d 176, 182 [1st Dept. 2011].

The problem with Plaintiffs' negligence claim is that the complaint pleads only facts that are identical to the breach of contract claim, only pleads injury that is identical to the injury resulting from the breach of contract and only alleges financial damages. *See Cedar & Wash. Assoc., LLC v. Bovis Lend Lease LMB, Inc.*, 95 A.D.3d 448, 449 [1st Dept. 2012] (dismissing tort claims asserted after a hotel fire when only economic loss was alleged). While a failure to properly install solar equipment could, in certain circumstances, potentially so endanger the public interest as to trigger the catastrophic consequences exception to the general prohibition on duplicative tort liability, there are no facts alleged here that would support imposition of an independent duty of care. Indeed, in *Sommer* the Court of Appeals noted that the crucial inquiry is the "nature of the injury, the manner in which the injury occurred and the resulting harm." *Sommer* at 552. Unlike the falling façade in *Columbia* or the fire damage in *General Sec. Ins.* (as outlined above), here there has been no alleged damage or injury that would trigger an independent tort duty of care.

Plaintiffs also allege that because the improperly installed units may impact third-party warranties, there is a duty of care independent from the contract. But such a claim is speculative and unripe, as any impact on third-party warranties is only posited as a potentiality, and there are no allegations that any third-party warranties have in fact been voided due to the improper installation. Therefore, the negligence claim is duplicative of the breach of contract claim and is properly dismissed. The professional malpractice claim fails for the same reasoning and is likewise properly dismissed.

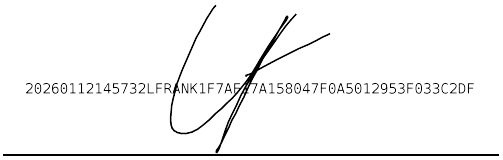
The Breach of Express Warranty Claim Is Duplicative of the Breach of Contract Claim

In their complaint, Plaintiffs plead a separate cause of action for breach of express warranty, alleging that Defendant failed to fulfill the warranty obligations imposed by the

agreements. Defendant moves to dismiss the breach of express warranty claim on the grounds that it is duplicative of the breach of contract claim. Plaintiffs oppose the dismissal and argue that the Second Department permits pleading breach of warranty in the alternative to breach of contract. In the First Department, a breach of an express warranty provision in a contract is considered to be simply another form of breach of contract. See, e.g., *Forman v. Guardian Life Ins. Co. of Am.*, 76 A.D.3d 886, 887 [1st Dept. 2010] (noting that the breach of contract claim was properly sustained based on allegations of a breach of a warranty clause in the agreement); *Nomura Home Equity Loan, Inc., Series 2006-FM2 v. Nomura Credit & Capital, Inc.*, 133 A.D.3d 96, 109 [1st Dept. 2015] (breach of a warranty claim referred to as breach of contract). Here, the same facts and alleged injury underpin both the breach of contract claim and the breach of express warranty claim, and both claims request identical relief. The two claims are therefore duplicative, and the breach of express warranty claim is properly dismissed. As a final note, Defendant requests that the claims be dismissed with prejudice. The Court declines to do so, in part because at least one claim is merely unripe and may in the future become a valid claim, as discussed above. Accordingly, it is hereby

ADJUDGED that the motion is granted in part; and it is further

ADJUDGED that claims two through six in the complaint are dismissed without prejudice as duplicative.



1/12/2026
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:		**CASE DISPOSED**			**X**	**NON-FINAL DISPOSITION**	
		GRANTED		**DENIED**	**X**	**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**