

Solar Energy/Project Development: Federal Court Addresses Breach of Contract Claim



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The United States District Court for the Southern District of New York (“Court”) in a June 4th Opinion and Order (“Opinion”) addressed a contractual dispute involving a solar energy generating project. See *DK LIPA LLC v. SB Energy Holdings, LLC, et al.*, 2020 WL 3000383.

The causes of action involved alleged breach of contract and tortious interference in acquiring property for the project.

DK LIPA and SB Energy Holdings entered into a Right of First Offer Agreement (“Agreement”) to acquire property for a photovoltaic solar energy generating project (“Solar Project”) in Long Island, New York. The Agreement provided an exclusivity period of 30 days during which SB Energy agreed to not accept any offers or proposals related to the Solar Project. If the Agreement was terminated during the succeeding 36 months SB Energy was required to notify DK LIPA within three business days of a written offer from any other party.

Following notice of a third-party offer, DK LIPA shall have the one-time right to enter into and execute an agreement under completely identical terms as agreed upon by DK LIPA and SB Energy in the original Agreement. The only exception is a provision providing that DK LIPA may elect to modify the total consideration paid to SB Energy.

The parties terminated the Agreement. SB Energy entered into a letter of intent (“LOI”) for partial co-development of a solar project with a third-party company (MISF), within 36 months of termination. SB Energy, however, did not notify DK LIPA of the LOI, or otherwise provide DK LIPA with an opportunity to exercise a right of first refusal.

DK LIPA sued to enforce the Agreement. SB Energy filed a Motion to Dismiss.

The Court found that the allegations plausibly support a breach of contract claim. It applied New York law noting a breach of contract claim requires proof of :

1. an agreement,
2. adequate performance by the plaintiff,
3. breach by the defendant, and
4. damages.

The key issue was element “3.” Therefore, the question was whether SB Energy breached the contract when it failed to provide notice to DK LIPA in accordance with the Agreement.

The Court found that the Agreement can reasonably be interpreted to mean that the LOI triggers the right of first refusal because the use of the word “offer” does not require a purchase. The LOI contemplates a different location for the project. However, the terms of the Agreement did not require that the location be the same. The project defined in the agreement was a photovoltaic solar energy generating project. This was the same project contemplated in the LOI. As a result, the Court found that DK LIPA had plausible claim for breach of contract against SB Energy for failing to notify DK LIPA of a third-party offer.

The Motion to Dismiss was denied.

A copy of the Opinion can be downloaded [here](#).