

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Hudson Solar Cayman, LP,

Plaintiff,

- against -

Sky Solar Holdings, LTD.,
Sky Solar Power LTD., and
Sky International Enterprise Group Limited,

Defendants.

Index No. 650847/2019

I.A.S. Part 3

Justice Joel M. Cohen

**AFFIDAVIT OF WU HAO IN SUPPORT OF DEFENDANTS' OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT IN LIEU OF COMPLAINT**

1. I am the Chairman of Sky Solar Holdings, Ltd. I submit this affidavit in support of the opposition of Sky Solar Holdings, Ltd., Sky Solar Power Ltd., and Sky International Enterprise Group Limited's (collectively, "Sky") to Hudson Solar, LP's ("Hudson") motion for summary judgment in lieu of complaint.

2. Sky and Hudson partnered in 2015 for purposes of investing in and developing renewable power and clean energy projects. As part of this partnership arrangement, Hudson agreed to provide an initial financing commitment to Sky of approximately \$100 million. Prior to finalizing this commitment and the contracts that followed, Hudson conducted due diligence into Sky's structure and business.

3. On September 18, 2015, Energy Capital Investment S.À R.L. ("ECI" or "Borrower"), Lumens Holdings 1, LLC ("Lumens"), Renewable Capital Investment 2, Sociedad Limitada ("RCI-2") and Hudson Solar (as Administrative Agent) (together the "NPA parties") entered into

a Note Purchase Agreement (“NPA”). Ex. 1. On the same date, Sky¹ entered into a Guaranty (“Guaranty”) in favor of Hudson Solar for the obligations of ECI under the NPA. Ex. 2.

4. On July 15, 2016, the NPA parties entered into the Amended and Restated NPA (“ARNPA”) and various ancillary agreements. Ex. 3. On July 16, 2016, Sky entered into a Confirmation of Guaranty (“Confirmation of Guaranty”) in favor of Hudson for the obligations of ECI under the ARNPA. Ex. 4.

5. Sky and Hudson’s partnership has been successful from a development perspective. For example, the parties have worked together on over 25 solar energy projects in Uruguay and the United States, totaling over 100 megawatts.

6. Under the ARNPA, Hudson was granted a substantial security package, including: (i) a first lien security interest over all of ECI’s present and future assets; (ii) a first ranking share pledge over all of the shares of ECI; (iii) a first lien pledge over all of RCI-2’s equity; (iv) a pledge over all of the shares of Lumens (the “Lumens pledge”); and (v) a second lien interest over all of the assets of certain Uruguay solar power project companies.

7. Additionally, under Section 3.5(j) of the ARNPA, ECI and Sky were required to pledge all shares, assets and property of Clear Skies I, LLC, Clear Skies II, LLC and Clear Skies IV, LLC, which were U.S.-based solar power project entities (collectively, “Clear Skies” and the “Clear Skies Pledge”).²

8. When the parties closed the ARNPA, Sky did not yet own 100% of Clear Skies. Under the ARNPA, a portion of the third and all of the fourth installment payments from Hudson were to be

¹ Specifically, Sky Solar Power Ltd. (a BVI subsidiary of Sky) and Sky International Enterprise Group Limited (a Hong Kong subsidiary of Sky) entered into the Guaranty.

² A diagram of company ownership is attached as Exhibit 5.

used to purchase Clear Skies. This purchase closed in July 2016, Ex. 6, which resulted in Clear Skies being owned by Lumens. After Lumens acquired Clear Skies, Hudson immediately had a security interest over Clear Skies by way of the Lumens Pledge. In other words, in the event of a default, even if the Clear Skies Pledge was not effectuated, Hudson would be able to control all of the shares of Lumens, who in turn owned Clear Skies.

9. However, Sky was unable to complete the Clear Skies Pledge due to consent issues with two minority investors in two operating companies owned by Clear Skies I and Clear Skies IV. Sky tried to obtain the consent of the minority investors, but the investors were (and still are) unresponsive to efforts to fulfill the Clear Skies Pledge.

10. The reason Lumens was not able to complete the Clear Skies I and IV Pledge was known to Hudson well before the parties signed the ARNPA in July 2016. In early 2016, Sky disclosed to Hudson the issues it was having with engaging the minority investors and Hudson accepted and acknowledged Sky's inability to complete the Clear Skies I and IV Pledge. For example, on July 6, 2016, before the execution of the ARNPA, Armin Seifart, corporate counsel for Sky at the time, informed Mark Manisty of Allen & Overy, counsel to Hudson, that Sky would not have full ownership of Clear Skies I and Clear Skies IV at the time of the ARNPA closing. Ex. 7. Hudson executed the ARNPA with this knowledge on July 15, 2016.

11. Unsurprisingly, given its knowledge of the issue with the minority investors, Hudson waived the Clear Skies Pledge on four separate occasions. Specifically, Hudson waived the Clear Skies Pledge on September 16, 2016, October 3, 2016, December 7, 2016, and May 15, 2017. Exs.

8-11. In each of these waiver letters, Section 3.4 provides:

“The Company and the Initial Note Purchaser mutually agree that the Unsatisfied Conditions to the Alternative Note Purchase cannot be satisfied prior to the date of the Alternative Note Purchase.”

12. In the last waiver letter from May 15, 2017, Hudson extended the timeframe to deliver the Clear Skies Pledge to July 31, 2017. Although Sky was unable to complete the Clear Skies Pledge by the July 31, 2017 deadline, Hudson did not seek to enforce the Clear Skies Pledge. And aside from a passing reference in a July 2018 letter regarding a potential rollover transaction, Ex. 12, Hudson did not mention the Clear Skies Pledge again until December 26, 2018—a year and a half after the July 2017 waiver expiration. Ex. 13.

13. While Hudson remained silent on the issue of the Clear Skies Pledge, it continued to receive interest payments from Sky on the Notes under the ARNPA, accepted those interest payments, and continued to finance and underwrite Sky's business activities.

14. Given these facts, among other things, I believed that there was always a mutual understanding amongst Hudson and Sky that the Clear Skies Pledge would not be provided unless there was a change of circumstances with the minority investors.

15. Among other things, Hudson's routine waivers and failure to express any urgency or concern regarding the Clear Skies Pledge for a year and a half after the last extension passed demonstrated to me that Hudson had permanently waived the Clear Skies Pledge. Therefore, Sky has always acted under the reasonable assumption that Hudson would not seek to enforce any rights that it had in relation to the Clear Skies Pledge.

16. Nevertheless, in an effort to accommodate Hudson, Sky has made multiple alternative proposals to take the place of the Clear Skies Pledge. For example, on January 11, 2019, Sky proposed putting \$20 million into escrow for Hudson, which would provide an equivalent, more liquid and potentially stronger collateral package for Hudson in place of the Clear Skies Pledge. Ex. 14. If Hudson's genuine intention was to obtain sufficient security from Sky, a reasonable

approach would have been to accept this proposal in lieu of the Clear Skies Pledge. However, for reasons unknown to Sky, Hudson rejected Sky's \$20 million proposal. Ex. 15.

17. As another alternative to the Clear Skies Pledge, Sky proposed providing Hudson with a security interest over other assets in Europe and Japan to address any potential security concerns. Ex. 14. But Hudson again refused to even engage on, much less accept, Sky's good-faith proposal.

18. If Sky had known Hudson would not agree to Sky's good-faith alternative proposals for the Clear Skies Pledge or that Hudson would suddenly allege an event of default after waiving the Clear Skies Pledge for years, Sky would have taken active steps to address the Clear Skies Pledge a long time ago and would have conducted its affairs very differently. For example, Sky would have reviewed its portfolio of projects to determine if Sky could pledge other projects as security or provide other projects in the form of a rollover transaction.

19. Given, among other things, that (a) Hudson knew the Clear Skies Pledge could not be perfected from the outset, (b) the subsequent waivers that Hudson gave resulted in the reasonable expectation that the waivers would continue, and (c) Hudson at no time gave any indication that it would enforce any rights that it purported to have based on the failure to remedy any imperfection in the Clear Skies Pledge, I believe Hudson's sudden claim that there is an event of default under the ARNPA related to the Clear Skies Pledge is neither reasonable nor meritorious.

20. I further believe that Hudson's claims that there have been additional events of default based on Sky's alleged failure to provide financial documents and an intercompany loan between ECI and Sky International Enterprise Group Limited ("Sky International") are similarly baseless.

21. There has been no event of default under Sections 5.1(c), 5.1(d)(ii)(B), (C), (D), and 5.1(v) of the ARNPA based on Sky's alleged failure to provide Hudson with certain financial documents. On the contrary, Sky has regularly provided Hudson with financial documents and reports and has

also provided additional materials to Hudson upon request. In fact, the first time Sky ever heard a complaint from Hudson regarding Sky's reporting was on January 17, 2019, when Hudson sent Sky a letter alleging that Sky had defaulted under the ARNPA by failing to provide certain financial documents. Ex. 16.

22. Hudson's assertion that a certain intercompany loan between ECI and Sky International constitutes an event of default under Sections 5.2(a)(i), 5.2(d)(vii), 5.2(e)(iii), 5.2(g), and 5.2(i) of the ARNPA is also baseless. It is my belief this is another allegation of default manufactured by Hudson in the hope of exerting undue pressure on Sky in order to force Sky to accept Hudson's December 24, 2018 acquisition offer, discussed in more detail below. Ex. 22.

23. By way of background, the alleged unauthorized intercompany loan was in place months before the parties executed the ARNPA, when ECI borrowed approximately \$36 million from Sky International via a number of loan assignments. In November s, this amount was reduced by approximately \$9.5 million, due to the sale of Arica Generacion Solar 1 SpA ("Arica") from ECI to RCI-1, which is 100% owned by Sky International. There were no cash payments involved in the Arica transaction, and Hudson consented to the Arica transaction. Ex. 17.

24. This intercompany loan was reflected on Sky's books and records in advance of the signing of the ARNPA in July 2016 and would have been apparent to Hudson during its due diligence review before entering into the ARNPA. Additionally, Hudson and Sky were partners for over three years while the intercompany loan was in place, and Hudson did not mention any concerns or disputes with the intercompany loan until a January 29, 2019 telephone call between Hudson and Sky and a subsequent February 1, 2019 letter from Hudson. Ex. 18.

25. I believe that Hudson never mentioned any concerns or disputes with the intercompany loan despite knowing about its existence because, among other things, it did not affect Hudson's security interest or ECI or Sky's liquidity and cash flows.

26. Additionally, I do not believe that the intercompany loan is technically a default under any of the sections as alleged because (i) it was not incurred as a "restricted debt"; (ii) there were no cash payments made on the loan; (iii) the loan did not constitute a change in any accounting practices of Sky; and (iv) it was otherwise known by Hudson. Therefore, I do not believe there has been any default under the negative covenants contained in Section 5.2 of the ARNPA.

27. At the end of the day, none of the technical events of default alleged by Hudson (even if they were truly events of default) should be grounds to accelerate under the ARNPA and severely harm Sky, because, among other things, Sky has met all payment obligations under the ARNPA. Additionally, Sky is current under all other financial obligations to other creditors.

28. Hudson's suggestion that Sky's completely separate obligation to a third party for a litigation settlement may push Sky into insolvency is incorrect. Additionally, Hudson has no interest or involvement in the litigation settlement and has no rights to consent or object to the litigation settlement.

29. For these reasons, I do not think there is any ground for Hudson to suggest that Sky is insolvent or may be soon.

30. Over the course of these proceedings, it has become clear to me that Hudson is improperly exploiting its rights under the ARNPA through its purported acceleration of Sky's obligations and the multiple legal proceedings it has initiated around the world, including serving Statutory

Demands in the Cayman Islands, the British Virgin Islands, and Hong Kong, Exs. 19-21,³ as leverage to force Sky into accepting Hudson's December 24, 2018 acquisition proposal, Ex. 22, and to promote Hudson's tactical "loan-to-own" strategy.

31. This strategy is evidenced by the timing of Hudson's actions. During most of 2018, Hudson and Sky were discussing a potential partial rollover plan where Hudson would convert part of its Notes into equity in Sky. In connection with those discussions, Sky allowed Hudson to conduct acquisition due diligence and, on December 24, 2018, Hudson proposed to acquire Sky via a statutory merger under Cayman law. Ex. 22. Just two days later, Hudson sent the first notice of an alleged event of default under Section 3.5(j) of the ARNPA—an alleged default that had been waived for years and for which no action had been taken for eighteen months. Ex. 13.

32. Although Sky engaged in good-faith negotiations regarding Hudson's acquisition offer from November 2018 through January 2019, Hudson continued to pressure Sky with manufactured events of default, threats of improper acceleration of the debt, and hostile and wrongful takeovers of ECI and RCI-2. Exs. 13, 16, 18, 23-33.

33. Then, after Hudson had sent Sky no fewer than eight threatening letters or notices, on January 29, 2019, Hudson sent Sky another letter about a potential acquisition. Ex. 34. Just three days later, Hudson sent yet another notice of a manufactured event of default. Ex. 18.

34. Looking at this timeline of events, I believe that Hudson has created or scoured the record for purported events of default in bad faith in order to accelerate a debt that is not due to seek to obtain control over Sky.

³ Hudson later withdrew these Statutory Demands on the eve of Sky's response date, notwithstanding refusing earlier requests from Sky to do so. Exs. 35-37. Those withdrawals only came after Sky retained counsel around the world and spent considerable time and money drafting responses to the Statutory Demands.

35. If Hudson is allowed to accelerate the ARNPA, there would be serious ramifications for Sky and its 151 employees across the world. These kinds of ramifications are not warranted here because Sky has never missed a payment under the ARNPA, all of Hudson's events of default are fabricated, and the acceleration and this lawsuit are baseless.

I, Wu Hao, affirm this 11th day of March, 2019, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, that the proceeding is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: March 11, 2019
Hong Kong


Wu Hao

COMMERCIAL DIVISION RULE 17 CERTIFICATION

Pursuant to Rule 17 of the Rules of the Commercial Division of the Supreme Court, 22 N.Y.C.R.R. § 202.70, I certify that this document contains 2,472 words and complies with the applicable word count limit.

Dated: March 11, 2019

/s/ Josh Greenblatt

Josh Greenblatt
Alexia R. Brancato
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
josh.greenblatt@kirkland.com
alexia.brancato@kirkland.com

*Attorneys for Defendants Sky Solar Holdings, Ltd.,
Sky Solar Power Ltd., and Sky International
Enterprise Group Limited*