

# Renewable Energy Production: U.S. District Court Addresses Dispute Involving Development Agreement



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A United States District Court (Rhode Island) ("Court") addressed in a November 6th Order a procedural motion associated with a dispute regarding parties who had entered into a series of agreements to develop renewable energy production facilities in Rhode Island.

The dispute involved the withdrawal of one of the parties from the project.

The Court's Order states that Half Moon Ventures ("HMV") and Energy Development Partners ("EDP") entered into agreements to develop renewable energy production facilities. HMV is stated to have withdrawn from the project. It subsequently filed a civil action seeking reimbursement under the project agreements and a guarantee that had been provided by an individual.

EDP filed an amended counterclaim alleging:

- Fraudulent Misrepresentation
- Breach of Contract
- Civil RICO Violations

The November 6th Order addresses HMV's Motion to Dismiss these counterclaims.

The Court in addressing the Motion to Dismiss noted it was required by Rule 12(b)(6) to take EDP's allegations as true (and in the light most favorable to HMV) in considering the Motion.

The Court first addressed EDP's fraudulent misrepresentation claim. It alleged that HMV represented to EDP that it:

... "remained committed" to the Richmond Project knowing it did not intend to go forward, it intended for EDP to rely on those misrepresentations and EDP reasonably relied on them, spending \$160k to maintain agreements with the City of Central Falls.

EDP was also allegedly damaged because it lost a grant and the option to secure other buyers for the project because of the withdrawal. The Court held that the elemental allegations in the claim would survive the Motion to Dismiss.

The breach of contract allegedly involved the Security Agreement. Membership interests were allegedly sold to another company without obtaining EDP's written consent. This consent was stated to have been required.

The Court states that HMV conceded that the first two elements for breach of contract were adequately pleaded. However, EDP was noted to have argued that there were no damages because the final installment on the project was not yet due. As a result, it was argued that HMV might still pay.

The Court responds that EDP indicated its damages stem from the loss of the security interests and attorney's fees. These losses were already realized. As a result, the Court stated that EDP has:

... set forth factual allegations relevant to each element of its breach of contract claim including damages.

This claim also survived the Motion to Dismiss.

Finally, in addressing the civil larceny and RICO claims, the Court notes that the allegation involved HMV's possession of the membership interests. Further, it was alleged that EDP had a valid and perfected security interest in those interests. Therefore, it was claimed that by selling those interests to another company HMV committed larceny under R.I. Gen. Laws § 11-41-16 and is civilly liable under R.I. Gen. Laws § 9-1-2 Section 11.

The Court cited the relevant statutory language and stated that a plain reading supported no larceny in the event of a sale of the perfected security interests when the seller acquired title. It cited HMV's obtaining the title to the membership interests. EDP therefore could not state a claim for larceny under § 11-41-16. The absence of racketeering activity underlying EDP's RICO claim rendered it deficient and therefore the Motion to Dismiss was granted as to this claim.

A copy of the opinion can be found [here](#).