

Tax Credits/Solar Energy: Arizona Appellate Decision Describing Purchasers' Breach of Contract Action



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An October 16th Arizona Court of Appeals decision describes a breach of contract action in a lower court involving the purchase of a residential solar energy system. See *Lakosky v. The Solar Store, LLC*, 2017 WL 4614724.

The purchasers alleged they did not receive an expected federal and state tax credit.

Cory and Jennifer Lakosky ("Lakosky") entered into contracts to purchase a solar electricity system and solar heater (collectively "System") from The Solar Store, LLC ("Solar Store").

Lakosky informed a Solar Store representative that they were considering the purchase of a System to decrease their expenses. They had contacted other solar companies.

The Solar Store representative allegedly informed Lakosky:

... with all the tax credits available [, a Solar Store system] would benefit [them] more financially.

The two contracts entered into with Solar Store are stated to contain a line-by-line breakdown of the costs associated with purchasing the respective systems. It was further noted:

... This breakdown starts with the total cost of the system and installation, and subtracts from that number assigned utility incentives, and federal and state tax credits, leaving a final figure labeled as the "Net Out of Pocket" cost to the consumer. Krause added a handwritten line to the contract for the solar energy system, stating that, under the then current electricity rates, the Lakoskys would have a full return on their investment in twelve years. Both contracts also include a "Projected Project Time Line," which approximates the amount of time from the signing of the contract until the receipt of the specified benefits. The time lines include permit approval, installation, inspection, and receipt of utility rebates, but do not include a timetable for reimbursement through tax credits. Neither contract states that the extent of any tax benefit is to be determined based on a person's income.

The Lakoskys were stated to have asked the Solar Store representative (Krause) whether they would get the full amount of the tax credits as a refund in the next tax year. He is stated to have assured them they would.

In 2014 the Lakoskys' tax preparer informed them that they would not be receiving the expected \$18,924 refund from the tax credits. Instead, the refund was stated to have been \$0 for federal and \$41 in Arizona solar tax credits. As to their 2015 filings, they were stated to have received \$528 in federal solar tax credits and \$223 in state tax credits.

The Lakoskys sued Solar Store for breach of contract and negligent misrepresentation. They asked for either rescission or approximately \$18,000 in damages as a remedy.

The lower court granted summary judgment in favor of the Solar Store on the negligent misrepresentation claim.

The Lakoskys argued at trial that in light of the difference between the actual cost of the systems and the promised “Net Out of Pocket” costs, Solar Store had breached the contracts.

Solar Store responded that no breach had occurred because the Lakoskys had received the tax credits they had been promised. Further, it argued that regardless of whether they were able to use the credits, all the benefits promised in the contracts had been provided. Solar Store also argued that awarding the Lakoskys any damages could result in double recovery because they would potentially utilize the tax credits in the future.

The Lakoskys elected the remedy of damages rather than rescission after the close of evidence. A jury returned a verdict in favor of them for \$14,000.

Solar Store challenged the jury verdict on appeal, arguing there was no evidence of breach of contract and “no factual or legal basis” for the damages awarded. The appellate court did not consider the arguments because Solar Store neither challenged the sufficiency of the evidence in a motion for a new trial nor in a motion for judgment as a matter of law.

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