

**Matter of Roberts v New York City Health & Hosp.
Corp.**

2010 NY Slip Op 33236(U)

November 15, 2010

Supreme Court, New York County

Docket Number: 111367/10

Judge: Alice Schlesinger

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

PRESENT: ALICE SCHLESINGER
Justice

IA PART 16
PART 16

Lillian Roberts, Et Al.

INDEX NO. 111367/10

MOTION DATE _____

MOTION SEQ. NO. 1

MOTION CAL. NO. _____

- v -

NYCHAC, Et Al.

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

for a preliminary injunction is denied in accordance with the accompanying memorandum decision. The Clerk shall randomly reassign this breach of contract action to a General IAS Part, as the action does not involve medical malpractice nor relate to the special proceedings assigned to this Court.

NOV 15 2010

Dated: November 15, 2010

Alice Schlesinger

ALICE SCHLESINGER I.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

General IAS Part
not medical malpractice nor related to pending case

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NEW YORK COUNTY CLERK'S OFFICE
PAPERS NUMBERED

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

-----X
In the Matter of

LILLIAN ROBERTS, as Executive Director of District
Council 37, American Federation of State, County and
Municipal Employees, AFL-CIO and
CARMEN CHARLES, as President of Local 420,
District Council 37,

Plaintiffs,

Index No. 111367/10
Motion Seq. No. 001

-against-

NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION; ALAN D. AVILES, as President of
the New York City Health and Hospitals; THE CITY
OF NEW YORK; MICHAEL R. BLOOMBERG, as
Mayor of the City of New York,

Defendants.
-----X

SCHLESINGER, J.:

The parties first appeared before this Court on October 18, 2010. On that occasion, after hearing oral argument and acquainting myself with the nature of the controversy, I denied the request by the plaintiffs District Council 37 and Local 420 for a temporary restraining order. The Court then scheduled the submission of additional papers and, on November 15, 2010, heard oral argument with regard to the plaintiffs' request for a preliminary injunction.

Specifically, the plaintiffs rely on a letter of July 14, 2005, written by Mr. Frank Cirillo of HHC to Lillian Roberts, Executive Director of District 37 and a plaintiff here.

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COUNTY CLERKS OFFICE

That letter, pursuant to the argument proffered by plaintiffs, constitutes a binding contract which is the predicate for the plenary action and the union's request for a preliminary injunction. The letter discusses the Brooklyn Central Laundry Phase-in ("BCL").

The plaintiffs in requesting an injunction are asking the Court to specifically enforce that alleged contract, to enjoin HHC from selling or leasing the BCL facility, to enjoin HHC from contracting with a vendor or third party to provide laundry service at the BCL location, and finally to enjoin HHC from laying off any employees who work at that BCL facility. I do have opposition from HHC. Its position is that in the first instance, this matter is not ripe for judicial review as no third-party contract has been signed, nor have any union layoffs been announced. It also argues that no contract actually exists between the parties and, therefore, the plaintiffs will not be successful on the merits. Finally, they say that there is neither irreparable harm to the plaintiffs, nor do the balance of equities favor them.

For this Court to grant a preliminary injunction, a significant form of relief, I must consider three criteria. All three have to operate in favor of the plaintiffs for such relief to be granted, or at least, they cannot operate against the moving party. Here, I find that I cannot issue a preliminary injunction, nor grant the plaintiffs the kind of specific performance that they are requesting at this stage of the litigation.

I wish to make clear here that I am not taking any position on whether or not the July 14, 2005 letter constitutes an enforceable contract. Arguments have been

proffered by both sides and it is clear that discovery has to proceed before a final determination on that issue can be made.

However, I am denying the preliminary injunctive relief sought because I do agree with HHC that this matter is not yet ripe for any intervention by the Court. Nor do I find that without such intervention, there will be irreparable injury to any members of District Council 37. What should be kept in mind here is a Memorandum of Economic Agreement ("MEA") dated October 30, 2008, between these parties, as well as others. In that Agreement, specifically in Section 11, there is a discussion about privatization of certain union functions. A process is described there wherein HHC as the employer has to provide the union with any and all details of a proposed contract with an outside vendor and then allow the union 45 days to come up with its own plan, a plan that would eliminate the need for that vendor.

Here, in July 2010, HHC did publish a Request for Proposals for Laundry Service Operations and a lease of the BCL facility. At the end of October 2010, a bidder was selected. However, as explained in oral argument, the procedure that now must be followed is for HHC to fully negotiate a contract with a vendor and sign a contract. However, any such contract cannot be come effective until and unless Section 11 is fully complied with. Therefore, there cannot be any lay offs of any District 37 employees until full compliance with the MEA has been achieved.

Therefore, I find that it would be improper for the Court to intervene and prevent that process from proceeding. As stated above, there is no assurance that

anyone from the union will lose his or her job at all, much less while the process is proceeding.

With regard to the balancing of the equities, at this point I cannot say that they conclusively weigh in favor of either side. Certainly members of the union have strong claims to their jobs. On the other hand, HHC argues that they are faced with a large budget deficit which they must address. Finally, as stated earlier, this Court takes no position with regard to the likelihood of success on the merits, which revolves around the existence of an enforceable contract.

Accordingly, it is hereby

ORDERED that plaintiffs' motion for a preliminary injunction is denied. This breach of contract will now be randomly reassigned to an IAS Part for the completion of discovery and a resolution on the merits of the claim.

Dated: November 15, 2010

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