

FCRC Modular, LLC v Skanska Modular LLC

2015 NY Slip Op 30441(U)

March 25, 2015

Supreme Court, New York County

Docket Number: 652721/14

Judge: Saliann Scarpulla

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 39

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FCRC MODULAR, LLC,
Plaintiff,

Index No.: 652721/2014

-against-

DECISION AND ORDER

SKANSKA MODULAR LLC and RICHARD A.
KENNEDY,
Defendants.

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HON. SALIANN SCARPULLA, J.:

In this action for breach of contract, plaintiff FCRC Modular, LLC (“FCRC”) moves for: (1) a preliminary injunction; and (2) expedited discovery.

In its motion papers and at oral argument, FCRC argued that defendants violated the Limited Liability Company Agreement (“LLC Agreement”) that existed between FCRC and defendant Skanska Modular LLC (“Skanska Modular”). The LLC Agreement formed FC+Skanska Modular, LLC (the “Company”). According to the LLC Agreement, in the event that FCRC or Skanska Modular reached an impasse on a “major decision,” as defined therein, either party could declare a “deadlock.” Subsequently, the parties would then meet to try to resolve the deadlock. If the parties were unable to resolve the deadlock, and the deadlock prevented the Company “from operating the Business in substantially the manner as had been intended by the Members during the ninety (90) day period prior to the disagreement,” then either FCRC or Skanska Modular could initiate a

buy/sell option, and buy all of the other member's interest by providing notice to the other member proposing a price.

As alleged by FCRC, on September 5, 2014, Skanska Modular shut down the Company's factory, and terminated all "remaining" non-union workers. The termination notices furloughed the Company's employees from the construction project known as the B2 Residential Project at Atlantic Yards (the "Project"), without consulting the Company's board of directors. On September 13, 2014, the Company's board met and voted on three resolutions: (1) to direct Kennedy to immediately withdraw the furlough notices; (2) to remove Skanska Modular as manager and replace it with FCRC Modular; and (3) to replace Kennedy as president with FCRC Modular Director Robert Sanna. The vote resulted in three tie votes of 3-3, split along corporate lines.

In its original complaint, filed September 5, 2014, and on its motion, FCRC sought a preliminary injunction enjoining Skanska Modular and Kennedy from: (1) taking any action with respect to the Company's factory that is contrary to the status quo as it existed prior to the issuance of the furlough notices; and (2) furloughing the workers and interrupting work at the factory. On its motion, FCRC argues that both Skanska Modular and defendant Richard A. Kennedy, the president of both Skanska Modular and the Company, violated the LLC Agreement by issuing termination notices to furlough the Company's workers, an alleged "major decision" pursuant to the LLC Agreement. FCRC claims that the injunction is necessary to prevent the furloughed workers, who have been

uniquely trained for the Project, from abandoning the Project, and to expedite the process of negotiating the buy/sell provision of the LLC Agreement. Additionally, FCRC moves to expedite the discovery in this action to aid in its application for injunctive relief.

Defendants oppose this motion and argue that furloughing the Company's workers and shutting down the Project did not require board approval, and that the need for expedited discovery has been mooted.

During oral argument on September 23, 2014, I found that replacing the managing member was a "major decision" pursuant to the LLC Agreement, and I granted FCRC's motion for a preliminary injunction only insofar as it directed the board to conduct a new meeting to engage in a vote to replace Kennedy, that was proper under the LLC Agreement. As for re-opening the factory and re-employing the furloughed workers, I stated that FCRC had not made a clear showing of the element of irreparable harm, for even if FCRC suffered damage as a result of defendants' alleged breach of the LLC Agreement, FCRC's loss, the furlough of the Company's workers may be compensated with money damages, and does not require the remedy of putting the workforce back on the payroll.¹

In any event, since that time, the parties have engaged in actions that have significantly changed the landscape of their relationship, which, therefore, obviates the need for the injunctive relief. FCRC's attorneys informed the court that pursuant to the

¹ I did not make a ruling on the issue of whether the issuance of furlough notices constitutes a "major decision."

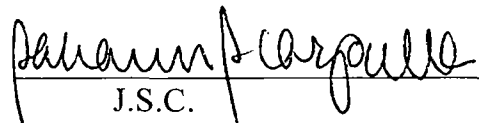
buy/sell provisions of the LLC Agreement, as described above, FCRC acquired Skanska Modular's interest in FC+Skanska Modular LLC, and thus, Skanska Modular no longer has rights to the Company's assets, including the factory. Further, in its first amended complaint, FCRC seeks damages incurred in the shutting and restarting of the Company, including rehiring workers and training new workers. Moreover, unlike the original complaint in this action, the first amended complaint does not seek a preliminary injunction, but only asks for money damages for the same two causes of action.

Accordingly, herein, the court reiterates its decision as set forth in the transcript of the September 23, 2014 oral argument, and the court finds no need for any additional relief.

This constitutes the decision and order of the court.

Dated: New York, New York
March 25, 2015

ENTER:


J.S.C.
HON. SALIANN SCARPULLA