Covanta Hudson Val. Renewable Energy, LLC v Dutchess County Resource Recovery Agency
2017 NY Slip Op 32839(U)
October 24, 2017
Supreme Court, Dutchess County
Docket Number: 50375/2014
Judge: James D. Pagones
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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS
---------------------------------------X
COVANTA HUDSON VALLEY RENEWABLE ENERGY, LLC,

Plaintiff,

-against-

DUTCHESS COUNTY RESOURCE RECOVERY AGENCY,

Defendant.

---------------------------------------X

DECISION AND ORDER

Index No. 50375/2014

PAGONES, J D., A.J.S.C.

Defendant moves for an order, pursuant to CPLR 2221(e), granting renewal of its cross-motion to amend and compel.

The following papers were read:

Notice of Motion-Affirmation-Exhibits A-D	1-6
Affidavit-Exhibit A	7-8
Affirmation-Exhibits A-B	9-11
Memorandum of Law	12
Memorandum of Law in Opposition	13
Memorandum of Law in Reply	14

Upon the foregoing papers, the motion is decided as follows:

It is the responsibility of the moving party to assemble complete papers which document the procedural history of the application and provide for a proper foundation for the relief requested (*see Biscone v. Jetblue Airways, Corp.*, 103 AD3d 158 [2nd Dept 2012] *appeal dismissed by* 20 NY3d 1084; *Lower Main St. v. Thomas Re & Partners*, 2005 WL 6760926 NYLJ, April 5, 2005, at 19, col 3 [Sup Ct, Nassau County, Alpert, J.]; 162 Siegel's Prac.

Rev. 4). Here, the defendant fails to do so.

Upon a review of the file as maintained by the Dutchess County Clerk and the New York State Electronic Filing System, the defendant's motion seeking renewal is denied.

It is well settled that a motion for leave to renew is addressed to the sound discretion of the Supreme Court (*see Mi Ja Lee v. Glicksman*, 14 AD3d 669 [2nd Dept 2005]). Although a motion for leave to renew generally must be based on newly-discovered facts, this requirement is a flexible one. A court has the discretion to grant renewal upon facts known to the movant at the time of the original motion, provided that the movant offers a reasonable justification for the failure to submit the additional facts on the original motion (*see Smith v. State of New York*, 71 AD3d 866 [2nd Dept 2010]). Leave to renew, however, is not freely given to a party who has not exercised due diligence in making the initial factual presentation (*id.*)

The defendant maintains that on January, 29, 2017, former Agency counsel James Nelson, Esq. discovered a closed file in his office which contained correspondence relevant to the parties' payment dispute. Counsel indicates that the correspondence evidences "the parties' ongoing discussions regarding renewal of the soon to expire Service Agreement, but also contains specific references to the parties' ongoing payment disputes and negotiations." Further, counsel states that the documentation "...primarily authored by Covanta representatives-establishes Covanta's knowledge of the outstanding fee disputes between the

parties dating as far back as 2010; as well as its knowing election and participation in informal negotiations and annual reconciliations with the Agency for years in lieu of the contractual dispute resolution process set forth in the Service Agreement."

Here, the defendant is attempting to obtain a second bite at the apple when they have not exercised due diligence in presenting their initial opposition (*see Zito v. Jastremski*, 84 AD3d 1069 [2nd Dept 2011] *leave to appeal dismissed in part, denied in part by* 17 NY3d 885; *Baldwin v. Mateogarcia*, 66 AD3d 806 [2nd Dept 2009]; *Hart v. City of New York*, 5 AD3d 438 [2nd Dept 2004] *leave to appeal denied by* 3 NY3d 601). Additionally, even if considered "new evidence", the submissions do not establish that the plaintiff waived the requirement of timely written notice of disputes as to its invoices (*see McFadyen Consulting Group, Inc. v. Puritan's Pride, Inc.*, 87 AD3d 620 [2nd Dept 2011]). As was stated in this Court's decision and order dated April 8, 2016:

> "[t]he fundamental, neutral precept of contract interpretation is that agreements are construed in accord with the parties' intent (*see Maser Consulting, P.A. v. Viola Park Realty, LLC*, 91 AD3d 836 [2nd Dept 2012]). The parties, two highly sophisticated business entities, negotiated a comprehensive service agreement providing for the exact method in which objections to invoices were to be processed. Where, as here, the contract is clear and unambiguous on its face, the intent of the parties must be gleaned from within the four corners of the instrument, and not from extrinsic evidence (*id.*)."

Accordingly, the defendant's motion to renew is denied in

its entirety.

The foregoing constitutes the decision and order of the Court. This decision and order has been electronically filed.

Dated: October 24, 2017
Poughkeepsie, New York

ENTER

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