

Ortega v Skyworx Contr. Inc.
2020 NY Slip Op 32628(U)
August 6, 2020
Supreme Court, New York County
Docket Number: 650826/2020
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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JUAN ORTEGA, IVAN NOBOA, JOHN JACHERO,
JAHSAKIE BESWICK, individually and on
behalf of all other persons similarly
situated who were employed by SKYWORX
CONTRACTING INC. and other entities
affiliated or controlled by SKYWORX
CONTRACTING INC., with respect to
certain Public Works Projects awarded
by the CITY OF NEW YORK, NEW YORK CITY
HOUSING AUTHORITY, SCHOOL CONSTRUCTION
AUTHORITY, and NEW YORK CITY
DEPARTMENT OF CITYWIDE ADMINISTRATIVE
SERVICES,

Index No. 650826/2020

Plaintiffs

- against -

DECISION AND ORDER

SKYWORX CONTRACTING INC., HARJIT SINGH,
P&K CONTRACTING INC., RASHEL
CONSTRUCTION CORP., NELLAM
CONSTRUCTION CORPORATION, FIDELIS
CONTRACTING, and JOHN DOE BONDING CO.,
1 THROUGH 30,

Defendants

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LUCY BILLINGS, J.S.C.:

Plaintiffs are scaffold workers employed by defendants on
public works projects at New York City Housing Authority (NYCHA)
buildings, public schools, courthouses, and government office
buildings pursuant to contracts with NYCHA, the New York City
School Construction Authority, and the the New York City
Department of Citywide Administrative Services. Plaintiffs claim
they were not paid mandated prevailing wages and supplemental

benefits under those contracts and New York Labor Law § 220.

Plaintiffs move for a preliminary injunction prohibiting defendants Skyworx Contracting Inc., its manager defendant Singh, and their managerial agents from contacting plaintiffs about this litigation, attempting to interfere with it and to coerce plaintiffs to discontinue it. They also seek to prohibit these defendants from transferring or otherwise depleting Skyworx Contracting's assets so as to render the corporation insolvent and seek to appoint a receiver to assure that the corporation remains solvent and does not dissolve.

After plaintiffs filed this motion, they filed a Second Amended Complaint. Even this amended pleading, like the pleadings that preceded it, does not claim that defendants have harassed plaintiffs about their action or retaliated against them, nor seek any relief for defendants' harassment or retaliation. Although in reply plaintiffs attest that Singh has threatened to close down Skyworx Contracting or change its name in response to plaintiffs' action, none of these allegations is on personal knowledge. Most importantly, the Second Amended Complaint nowhere alleges that defendants have threatened to close down Skyworx Contracting or change its name or attempted to transfer or otherwise deplete its assets so as to render the corporation insolvent. The Second Amended Complaint claims defendants' breach of the public works contracts, fraud in

concealing plaintiffs' entitlement to prevailing wages and supplemental benefits, and violations of the Labor Law and seeks only compensatory relief for these unlawful actions and omissions.

"CPLR 6301 and 6312(a) require a link between a cause of action and a preliminary injunction. There is no such link in the case at bar." Davis v. Influx Capital Group, LLC, 183 A.D.3d 538, 538 (1st Dep't 2020). Consequently, plaintiffs will not possibly succeed on their claims that defendants are unlawfully contacting plaintiffs about this litigation, attempting to interfere with it and to coerce plaintiffs to discontinue it, or are unlawfully transferring or otherwise depleting Skyworx Contracting's assets so as to render the corporation insolvent, because plaintiffs do not allege such claims. Since plaintiffs fail to demonstrate that the claims on which plaintiffs base their motion for a preliminary injunction are likely to succeed, the court denies their motion, C.P.L.R. §§ 6301, 6312(a); Nobu Next Door, LLC v. Fine Arts Hous., Inc., 4 N.Y.3d 839, 840 (2005); CWCapital Cobalt VR Ltd. v. CWCapital Invs. LLC, 168 A.D.3d 567, 567-68 (1st Dep't 2019); Weinberg v. Kaminsky, 166 A.D.3d 428, 429 (1st Dep't 2018); Lee v. 215 W. 88 St. Holdings, LLC, 106 A.D.3d 460, 461 (1st Dep't 2013), and vacates the

temporary restraining order signed February 11, 2020 (Masley,
J.).

DATED: August 6, 2020

Lucy Billings

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C