

Matter of Strong Steel Door Corp. v City of New York
2013 NY Slip Op 31027(U)
May 8, 2013
Sup Ct, New York County
Docket Number: 103911/12
Judge: Donna M. Mills
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SUPREME COURT OF THE STATE OF NEW YORK—NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 58

In the Matter of the Application of
STRONG STEEL DOOR CORPORATION, et. al.,

Index No. 103911/12

Petitioner,
-against-

MOTION DATE _____

CITY OF NEW YORK, et al.,
Respondents.

MOTION SEQ. NO. 001

MOTION CAL NO. _____

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

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... 1

Answering Affidavits- Exhibits _____

UNFILED JUDGMENT

Replying Affidavits _____

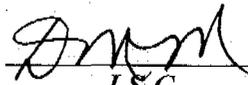
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

CROSS-MOTION: YES

Upon the foregoing papers, it is ordered that this motion is _____.

DECIDED IN ACCORDANCE WITH ATTACHED ORDER.

Dated: 5/8/13


DONNA M. MILLS, J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: 1AS PART 58

-----X

In the Matter of the Application of
STRONG STEEL DOOR CORPORATION, and
FENG WEI,

Petitioners,

For a Judgment Pursuant to CPLR Article 78

-against-

Index No. 103911/12

CITY OF NEW YORK; and NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Respondents.

-----X

DONNA M. MILLS, J.:

In this special proceeding pursuant to C.P.L.R. Article 78, petitioner Strong Steel Door Corporation and its president and principal owner Feng Q, Wei (collectively "Petitioners"), seek to challenge the alleged termination of its contract with the City of New York ("City") JOC-08-BWSO-3G. Petitioners also challenge the termination of three "projects" under the contract.

Petitioners submitted a bid on the above-referenced Job Order Contract in June 2009 and was approved as a contractor by the City of New York. In or around September 2011, Petitioners were awarded Project # 10-RE-SSD3G-002.02 under the subject Job Order Contract. This project involved restoration and cleaning of the North-West Gatehouse of the Central Park Reservoir. The scope of the project included scaffold construction, removal of loose concrete from the ceiling and beams, installation of a skylight and roof access door, as well as cleaning the gatehouse of all debris. Additionally, Petitioners were charged with removal of an interior shed.

In or around October 2011, Petitioners were awarded Project #10-RE-SSD3G-002.03 under JOC-08-BWSO-3G. This project pertained to engineering drawings for the North West Gatehouse in Central Park. Petitioners submitted a proposal, #10-RE-SSD3G-002.04, for installation of a skylight and roof access door. Additionally, Petitioners' submitted a proposal, #10-RE-SSD3G-002.05, for construction of scaffolding over water wells on the project.

Petitioners maintain that several disputes occurred during the course of its contract with the City. Specifically, Petitioners claim that the City ordered it to erect scaffolding in a manner that was in contravention to acceptable and safe standards for its workers and the environment. Petitioners further allege that the City directed it to perform construction related work over water wells without covering the water wells in violation of environmental health and safety guidelines. Lastly, Petitioners claim that a dispute arose regarding the removal of the interior shed under the first project. Petitioners maintain that they could not legally remove the interior shed because it first required prior abatement of lead paint, which was to be performed by the City or a separate licensed contractor.

Subsequent to the aforementioned disputes, in or around March 2012, Petitioners maintain that the City unofficially notified them that its projects #10-RE-SSD3G-002.02, #10-RE-SSD3G-002.03, and #10-RE-SSD3G-002.05 pursuant to JOC-08-BWSO-3G were cancelled. Additionally, Petitioners argue that the City failed to proceed with Project #10-RE-SSD3G-002.04, and did not award additional job orders under contract JOC-08-BWSO-3G.

The City disputes the basis for its cancellation of the projects undertaken by

Petitioners. The City contends that the Petitioners failed to make adequate progress on two of the job orders and issued a letter to Petitioner alerting it to the City's dissatisfaction with its progress. The letter purportedly also directed Petitioners to submit the required engineering drawings to satisfy Job Order #10-RE-SSD3G-002.03 by April 18, 2012 and to complete the scaffold erection by April 25, 2012.

It is undisputed that representatives from the City and Petitioners met to discuss Petitioners progress, or lack thereof, on the projects that were in progress. The City contends, however, that the parties agreed to cancel Job Order #10-RE-SSD3G-002.02, which therefore rendered Job Order #10-RE-SSD3G-002.03 moot. The City maintains that the remaining two job orders were never issued to Petitioner because Petitioner failed to submit an acceptable proposal.

On October 15, 2012, Petitioners commenced this Article 78 proceeding seeking 1) to annul the cancellation of the "projects," 2) for the City to fulfill its obligations under Job Order #10-RE-SSD3G-002.03, 3) to provide Petitioners with proof of lead abatement at the projects' job site; and 4) an award of monetary damages for lost profits, lost business opportunities, and injury to its reputation as a result of the City alleged breach of contract.

The City opposes the motion and maintains that its decision were all rationally based and made pursuant to the City's rights under the Contract.

Article 3B of the Contract, entitled Developing the Job Order provides:

3B.3.1 The Department [DEP] will evaluate the entire Proposal and proposed tasks and compare these with the Department's cost estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the nature and quantity of tasks proposed.

3B.3.2 The Department reserves the right to reject a Proposal or cancel a project for any reason. The Department also reserves the right not to issue a Job Order if that is determined to be in the best Interests of the Department.

Article 64 of the Contract, entitled Termination by the City also provides:

64.1 In addition to termination pursuant to any other article of this Contract, the Commissioner may, at any time, terminate this Contract, a Job Order or portion of a Job Order, by written notice to the Contractor.

The applicable standard of review is whether the administrative decision was: (1) made in violation of lawful procedure; (2) affected by an error of law; or (3) arbitrary or capricious or an abuse of discretion, including whether the penalty imposed was an abuse of discretion (CPLR 7803 [3]). An agency abuses its exercise of discretion if its administrative orders lack a rational basis. "[T]he proper test is whether there is a rational basis for the administrative orders, the review not being of determinations made after quasi-judicial hearings required by statute or law" (Mater of Pell v Board of Educ. Of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 231 [1974]).

It is a well-established principle of law that when a contract affords a party the unqualified right to limit its life by notice of termination that right is absolute and will be upheld in accordance with its clear and unambiguous terms (New York Telephone Co. v. Jamestown Tel. Corp., 282 N.Y. 365, 373, 26 N.E.2d 295; Crown Point Iron Co. v. Aetna Insurance Co., 127 N.Y. 608, 615, 28 N.E. 653). "A party has an absolute, unqualified right to terminate a contract on notice pursuant to an unconditional termination clause without court inquiry into whether the termination was activated by an ulterior motive" (Big Apple Car v. City of New York, 204 A.D.2d 109, 111, 611

N.Y.S.2d 533). Such a termination is enforceable regardless of the cause of termination (A.S. Rampell, Inc. v. Hyster Co., 3 N.Y.2d 369, 382, 165 N.Y.S.2d 475, 144 N.E.2d 371). A contract terminable without cause does not give rise to a protected property interest (see S & D Maintenance Co., Inc. v. Goldin, 844 F.2d 962 [2d Cir.]), such as would afford the right to a hearing as to the propriety of the termination.

Since the City's decision to terminate the contract was an exercise of a contractual right not subject to judicial review, the petition must be dismissed.

Accordingly it is

ADJUDGED that the petition is denied and the proceeding is dismissed, with costs and disbursements to respondents.

Dated: 5/8/13

ENTER:

[Signature]
J.S.C.

DOMINIC M. HILLS, J.S.C.