

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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ERI/SNL 2015 HOLDINGS LLC, ERI/SNL 2017
HOLDINGS LLC, ERI/SNL 2018 HOLDINGS LLC, F2017
EMPLOYEE PARTICIPATION FUND LLC, and F2018
EMPLOYEE PARTICIPATION FUND LLC,

Plaintiffs,

- v -

SNL DEVELOPMENT GROUP LLC, SNL CAPITAL
PARTNERS, LLC, SNL CONSTRUCTION, LLC, SNL
FUND LLC, and MARC SHARINN,

Defendants.

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INDEX NO. 653695/2023
MOTION DATE N/A
MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 44, 45, 46, 47, 48, 49, 50, 51, 54, 55, 56, 57, 58, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Upon the foregoing documents, it is

This action is about 22 self-storage facilities built around New York State.

For the reasons stated on the record on October 24, 2023, plaintiffs' motion for a preliminary injunction is granted and denied without prejudice as to disqualification of David Bolton, attorney for defendants. Plaintiffs shall submit the transcript to be so ordered.

Plaintiffs have satisfied the requirements of CPLR 6301. In the complaint, plaintiffs allege a variety of breaches of contract which are supported by the affidavits of Joanne D.C. Foley, Esq., Partner and General Counsel of Equity Resource Investments, LLC (ERI)¹ (NYSCEF 47, Foley aff.), Ann Gittleman, Managing Director at

¹ Plaintiffs are affiliated with ERI. (NYSCEF 37, Amended Complaint ¶ 1.)

Kroll, LLC² (NYSCEF 46, Gittleman aff.), and Kurt Spring, Partner of ERI. (NYSCEF 76, Spring aff.) Plaintiffs also allege: (2) conversion (against SNL Development Group, LLC, SNL Capital Partners LLC, SNL Construction, LLC, and SNL Fund LLC); (3) aiding and abetting conversion (against Marc Sharinn) (4) unjust enrichment (against SNL Development Group, LLC, SNL Capital Partners LLC, SNL Construction, LLC, and SNL Fund LLC); (5) fraud (against SNL Development Group, LLC, SNL Capital Partners LLC, SNL Construction, LLC, and Marc Sharinn); (6) aiding and abetting fraud (against Marc Sharinn); and (7) indemnification (against SNL Development Group, LLC and SNL Capital Partners LLC). In addition to likelihood of success on the merits, plaintiffs will be irreparably harmed if they do not have the tools necessary to continue construction and operation of the 22 storage facilities not already sold to which they are entitled under the operating agreements. Finally, the equities favor all the parties to keep the projects going and not defaulting.

SNL Capital Partners, LLC, a New York LLC, ERI/SNL 2018 Holdings LLC, a Massachusetts LLC, and F2018 Employee Participation Fund LLC, a Massachusetts LLC are the parties to the February 26, 2019 operating agreement of SNL/ERI 2019 Holdings LLC, a Delaware LLC. (NYSCEF 6, Operating Agreement at 1.)³ Section 4.3(b) of the Operating Agreement provides: “the prior Managing Member shall promptly turnover all Company books, records and other items requested by the Manager so appointed to facilitate its future management of the Company and its assets.” On July

² ERI retained Kroll, LLC to perform an audit of the books and accounts of ERI’s joint ventures with SNL Development Group LLC. (NYSCEF 46, Gittleman aff. ¶ 1.)

³ See also NYSCEF 3, 2015 Operating Agreement; NYSCF 4, 2017 Operating Agreement; and NYSCEF 5, 2018 Operating Agreement.

27, 2023, ERI served SNL with Notices of Removal. (NYSCEF 37, Amended Complaint ¶ 129; NYSCEF 47, Foley aff. ¶ 25.) On September 21, 2023, SNL withdrew its opposition to removal. (NYSCEF 37, Amended Complaint ¶ 132; NYSCEF 47, Foley aff. ¶ 28.) Defendant Marc Sharinn states that SNL Development Group LLC and SNL Capital Partners, LLC have no objections to assisting the transition of management to plaintiffs. (NYSCEF 66, Sharinn aff. ¶ 4.)

However, defendants have admittedly failed to transfer any documents or tools necessary to operate the platforms and ventures even though plaintiffs have had control of the ventures and platforms since September. Rather, all of plaintiffs' information has come from subpoenas and others – not defendants. It appears that a cause of action exists in favor of plaintiffs and against defendants and that plaintiffs are entitled to a preliminary injunction on the ground that defendants threaten or are about to do or are doing or procuring or suffering to be done, an act in violation of plaintiffs' rights respecting the subject of the action and tending to render the judgment ineffectual.

Plaintiffs have demanded an order:

- (A) "Directing Defendants to immediately transfer all original documents and electronically stored information ('ESI'), including all metadata and access to third party (e.g., bank) portals, that Defendants used or had available to them in their former roles as Managing Members of their joint venture partnerships to Plaintiffs as current Managing Members of the same entities, including without limitation such documents and data from defendants SNL Construction LLC and SNL Fund LLC;
- (B) Directing Defendants to preserve and refrain from altering, depleting, transferring or dissipating all documents and ESI relating to, and to preserve and refrain from conveying or encumbering all assets belonging to, the LLCs (Platforms) and Platform Ventures formed by Plaintiffs and Defendants." (NYSCEF 54, Order to Show Cause [mot. seq. no. 004].)

Accordingly, it is

ORDERED that plaintiffs' motion is granted in part; and it is further

ORDERED that the undertaking is fixed in the sum of \$1,000 conditioned that plaintiffs, if it is finally determined that they were not entitled to an injunction, will pay to defendants all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that defendants, their agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of defendants, are enjoined and restrained, during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of defendants or otherwise, any of the following acts:

1. All defendants shall refrain from interfering with plaintiffs' operation of the platforms and ventures as managing members of their joint ventures;
2. By October 27, 2023, SNL Development Group LLC and SNL Capital Partners, LLC shall transfer to plaintiffs all historical documents, correspondence (to and from these defendants), including all bank records and contracts executed by these defendants or on behalf of these defendants for the 22 projects, that these defendants used or had available to them in their former roles as managing members of their joint venture partnerships including all metadata;
3. By October 27, 2023, SNL Development Group LLC and SNL Capital Partners, LLC shall transfer to plaintiffs all documents and data exchanged between these defendants and defendants SNL Construction LLC and SNL Fund LLC that these defendants used or had available to them in their former roles as managing members of their joint venture partnerships including all metadata;
4. By October 27, 2023, SNL Development Group LLC and SNL Capital Partners, LLC shall provide plaintiffs with access to Procore, the project management system;
5. By October 27, 2023, SNL Development Group LLC and SNL Capital Partners, LLC shall transfer or provide access to plaintiffs to all documents, programs, apps, databases and technology necessary to

operate the platforms and ventures, including QuickBooks, that these defendants used or had available to them in their former roles as managing members of their joint venture partnerships including all metadata; and it is further

ORDERED that plaintiffs shall provide defendants by October 25, 2023 copies of liens on four current projects, default notices, and due diligence letter to and by November 1, 2023, defendants shall provide plaintiffs with all information necessary to respond to or defend against these documents, if not already provided; and it is further

ORDERED that all defendants shall preserve and refrain from altering, depleting, transferring or dissipating all documents and ESI relating to, and to preserve and refrain from conveying or encumbering all assets belonging to, the LLCs (Platforms) and Platform Ventures formed by plaintiffs and defendants.

11/4/2023
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE