

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

A.J. RICHARD & SONS, INC.,

Plaintiff,

-against-

FOREST CITY RATNER COMPANIES, LLC,

Defendant.

Index No. 514736/2015

**STIPULATION AND ORDER**

WHEREAS, the Commercial Division of the New York State Supreme Court for Kings County issued a Decision, Order and Judgment dated January 28, 2019 and entered on January 30, 2019 (the “Final Judgment”) in the above-captioned case (“Specific Performance Case”) finding that the December 6, 2006 letter of intent (the “LOI”) between Forest City Ratner Companies, LLC (“FCR” or “Forest City”) and A.J. Richard & Sons Inc. (“A.J. Richard”) is a “valid and binding contract”; finding that A.J. Richard “would be irreparably harmed if Forest City or those working in concert with Forest City obtain the property, other than pursuant to the terms of the LOI”; directing that Forest City “specifically perform its contractual obligations under the LOI, and, pursuant to the terms of the LOI, . . . negotiate and finalize the Implementing Documents in good faith in order to complete the transaction”; and ordering that “Forest City and those working in concert with Forest City are enjoined from breaching the LOI, as previously provided in the preliminary injunction”, which, among other things, “restrain[s] Forest City and all those acting in concert with it from taking any action: . . . to deprive A.J. Richard of title to or possession of the property” (Dkt. No. 271 at 13, 24);

WHEREAS, Forest City appealed the Final Judgment to the Appellate Division, Second Department on March 11, 2019 (the “Appeal”);

WHEREAS, briefing on Forest City's Appeal was completed in May of 2019;

WHEREAS, the Appellate Division, Second Department has not yet acted on Forest City's Appeal and the appeal has not been orally argued or marked submitted;

WHEREAS, on November 20, 2019, the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") commenced condemnation proceedings by filing a notice of pendency and verified petition in the New York State Supreme Court for Kings County (the "Condemnation Proceeding");

WHEREAS, on June 12, 2020, Forest City filed an Order to Show Cause ("OSC") for a Stay Pending Appeal of the Final Judgment and a Temporary Restraining Order ("TRO") restraining A.J. Richard from enforcing the Final Judgment (Motion Seq. 8);

WHEREAS, on June 14, 2020, A.J. Richard moved for contempt against Forest City for violating the Final Judgment (Motion Seq. 9);

WHEREAS, on June 15, 2020, this Court issued the OSC and pending a hearing on July 29, 2020, temporarily restrained A.J. Richard from enforcing the Final Judgment, including initiating or pursuing contempt proceedings against Forest City (Dkt. 371);

WHEREAS, by Stipulation dated July 24, 2020 (Dkt. 373) and two subsequent Stipulations dated August 22, 2020 and August 28, 2020 (Dkts. 375 & 376, respectively), the parties adjourned the return date for the OSC and A.J. Richard's contempt motion to October 7, 2020 and agreed that the TRO would remain in effect pursuant to the OSC;

WHEREAS, on August 12, 2020, the Court in the Condemnation Proceeding issued a Decision and Order (the "Condemnation Stay") staying the Condemnation Proceeding pending resolution of the Appeal in the Specific Performance Case;

WHEREAS, in light of the Condemnation Stay, A.J. Richard's agreement to withdraw its motion for contempt against Forest City (Motion Seq. 9) without prejudice and the

Final Judgment Stay described below, Forest City has agreed to withdraw without prejudice Forest City's Order to Show Cause for a Stay Pending Appeal (Motion Seq. 8);

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED THAT enforcement of the portion of the Final Judgment requiring FCR to "specifically perform its contractual obligations under the LOI, and, pursuant to the terms of the LOI, . . . negotiate and finalize the Implementing Documents in good faith in order to complete the transaction" is stayed (the "Final Judgment Stay") until the earlier of (i) resolution of the Appeal and the expiration and/or resolution of any further appeal from the Second Department's ruling, or (ii) any expiration, vacatur or modification of the Condemnation Stay. Notwithstanding the foregoing, no other portions of the Final Judgment are stayed. For the avoidance of doubt, nothing herein shall be interpreted to prohibit the parties from negotiating and finalizing the Implementing Documents on a consensual basis in order to complete the transaction pursuant to the terms of the LOI or to complete an alternative transaction that is mutually agreeable to the parties; and

IT IS FURTHER STIPULATED AND AGREED that A.J. Richard hereby withdraws its motion to hold Forest City in contempt of court, dated June 14, 2020 (Motion Seq. 9), without prejudice. For the avoidance of doubt, this Stipulation shall be without prejudice to any argument, contention or position A.J. Richard may make in connection with any application for contempt.

IT IS FURTHER STIPULATED AND AGREED that A.J. Richard has no present intent to file, and will not file, any application to hold Forest City in contempt of court, based solely on existing circumstances known to A.J. Richard. Should A.J. Richard determine, based on future developments, that it may wish to proceed with such an application, A.J. Richard agrees that it will meet and confer with Forest City concerning the basis for the application. A.J.

Richard further agrees that it shall provide Forest City seventy-two (72) hours' notice (the "Notice Period") in advance of filing any application for contempt prior to the resolution of the Appeal; and

IT IS FURTHER STIPULATED AND AGREED that in light of the Final Judgment Stay and A.J. Richard's provision of the Notice Period prior to renewing any further application for contempt, Forest City withdraws the OSC (Motion Seq. 8), without prejudice to re-filing or renewing the OSC or otherwise seeking the relief requested therein, including in the event A.J. Richard notifies Forest City that it intends to proceed with an application for contempt or in the event the Final Judgment Stay lapses or is lifted.

DATED: September 4, 2020  
New York, New York

SO STIPULATED.

By: /s/ Robert H. Baron  
Robert H. Baron  
Rory A. Leraris  
Justin C. Clarke

By: /s/ Adam M. Abensohn  
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*Attorneys for Defendant Forest City  
Ratner Companies, LLC*

*Attorneys for Plaintiff A.J. Richard & Sons,  
Inc.*

SO ORDERED:

LDM

Dated: September 11, 2020