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Order on Defendants' Motion for Partial Summary Judgment (North Star Jefferson, LLC et al.)

Elizabeth E. Long

Fulton County Superior Court, Judge

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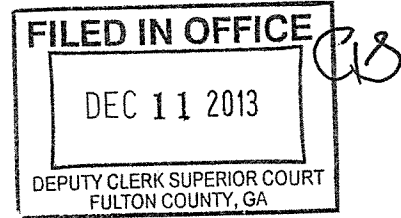
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

COPY

NORTH STAR JEFFERSON, LLC &)
COMMUNITY WEALTH THROUGH)
FORESTRY, INC.,)
)
Plaintiff,)
)
v.)
)
NORTH STAR RENEWABLE POWER, LLC,)
NORTH STAR RENEWABLE ENERGY,)
LLC, RICK CASHATT,)
)
Defendants,)
)
NORTH STAR RENEWABLE POWER, LLC)
)
Counterclaim Plaintiff,)
)
v.)
)
COMMUNITY WEALTH THROUGH)
FORESTRY, INC., CARLTON OWEN)
And U.S. ENDOWMENT FOR FORESTRY)
AND COMMUNITIES, INC.)
)
Counterclaim Defendants.)

Civil Action File No.
2013CV233313



ORDER ON DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

This matter is before the Court on Defendants' Motion for Partial Summary Judgment.

Upon consideration of the parties' arguments, the briefs on the motion and the record of the case, this Court finds as follows:

North Star Jefferson, LLC ("NSJ") is an entity created to develop and operate a biomass fired renewable energy plant in Jefferson County, Georgia. NSJ is owned by Plaintiff Community Wealth Through Forestry, Inc. ("CWTF") and Defendant North Star Renewable Power, LLC ("NSRP"). Initially, CWTF obtained 75% ownership of the entity in exchange for

financial backing of the project, while NSRP held 25% ownership and was appointed as Manager of NSJ.

On September 27, 2012, CWTF loaned NSJ \$260,000. NSRP, acting by and through Defendant Rick Cashatt (“Cashatt”), executed both the Loan Agreement and the Note in its capacity as manager of NSJ. Under the Loan Agreement and Promissory Note, NSJ agreed to repay the principal in one lump sum by October 27, 2012. Upon default, the Loan Agreement provided that CWTF could “convert the unpaid loan and any earned but unpaid interest to a proportional increase in the capital currently held by [CWTF] in Borrower’s ‘project.’”

Likewise, the Promissory Note provided that “[a]ny remaining unpaid principal and accrued and unpaid interest may be converted, at the Lender’s discretion, to a proportional increase in the equity stake currently held by [CWTF] in the Borrower’s ‘project.’”

On November 29, 2012, CWTF notified NSJ that it was in default of the Note. On March 1, 2013, CWTF notified NSRP that it had converted the outstanding indebtedness to equity in NSJ, and, as a result of its acquisition of a “Super Majority” interest, it was unilaterally acting to replace NSRP as Manager of NSJ.

Defendants seek summary judgment on the following discrete issues: 1) CWTF does not have a “Super Majority” interest in NSJ; 2) NSRP is the manager of NSJ; and 3) CWTF’s attempted termination of NSRP’s position as manager of NSJ was null and of no effect.

A court should grant a motion for summary judgment pursuant to O.C.G.A. § 9-11-56 when the moving party shows that no genuine issue of material fact remains to be tried and that the undisputed facts, viewed in the light most favorable to the non-movant, warrants summary judgment as a matter of law. Lau’s Corp., Inc. v. Haskins, 261 Ga. 491, 491 (1991).

As an initial matter, Plaintiffs contend that this motion fails because earlier Judge Downs addressed and rejected the same legal arguments presented here by Defendants in connection with their Motion for Preliminary Injunction. In her Order, Judge Downs specifically found that “CWTF is the current corporate manager of North Star Jefferson, LLC (“NSJ”). CWTF announced and took action on March 1, 2013 wherein CWTF: assumed Super Majority status; relieved NSRP as corporate manager; and appointed itself as corporate manager.” Further, Judge Downs found that “NSRP is [not] likely to prevail on the merits of its claims.” Plaintiffs argue that this finding forecloses the Court’s separate consideration of these issues.

The Court disagrees. Pursuant to O.C.G.A. § 9-11-60(h), the “law of the case” rule has been abolished as it concerns the orders of a trial court. Further, the Georgia Supreme Court has specifically held that “the grant or denial of an interlocutory injunction, as well as the affirmance thereof by this court without opinion, does not establish the law of the case for the trial on the merits.” Sneakers of Cobb Cnty. v. Cobb Cnty., 265 Ga. 410, 410 (1995). As such, the Court is not prohibited from revisiting, under the summary judgment standard, matters that have been addressed at the interlocutory injunction phase. Therefore, the Court will turn to the merits of Defendants’ motion.

Pursuant to Section 2.2 of the Limited Liability Company Agreement of North Star Jefferson, LLC (“Operating Agreement”), “[a] Manager may not be removed unless...upon a vote of the Members holding a Percentage of no less than 81% (a “Super Majority”) vote to remove the Manager.” Defendants argue that CWTF did not have the requisite ownership percentage in order to trigger Super Majority authority to remove NSRP. Specifically, Defendants dispute that the remedy contained in the Loan Agreement and Promissory Note was sufficient to override the Operating Agreement, which called for a “Super Majority” in order for

a Manager to “issue any Units...or accept any new Members of the Company.” On the strength of this provision, Defendants argue that NSJ, without the express agreement of NSRP, was not authorized to agree to a remedy in the Loan Agreement and Promissory Note that would permit CWTF to actually convert any indebtedness into equity. Although NSRP signed the documents on behalf of NSJ, it would have to get written permission from itself, as a Member of NSJ, before such a provision would be enforceable against it.

Additionally, Defendants dispute that the language in the Loan Agreement and Promissory Note, referring to CWTF’s right as Lender to convert outstanding indebtedness into an increase in “capital” or an “equity stake,” was intended to effect an increase in membership “Units” in NSJ.


The Court is not persuaded that Defendants’ interpretation of the Operating Agreement is sufficient to carry summary judgment. Section 5.2 specifically authorizes the Manager to “determine...all matters relating to ...capital contributions, including but not limited to, the value of the Company, the terms upon which capital contributions are to be made, the equity interest to be issued in connection with any additional capital contributions (which may include terms under which preferred interests in the Company are granted with respect to those contributions), and the terms upon which the additional members are admitted to the Company.” Moreover, the Manager had authority to execute any document or instrument necessary to carry out its authority under the Operating Agreement. In this way, the Operating Agreement provides a mechanism to support the transaction at issue.

While the \$260,000 loan may or may not be treated as a response to a “capital call,” the Court finds that the proper characterization of this transaction is a fact issue that should be resolved by the trier of fact. Moreover, the different semantics used in the documents to refer to

an equity interest, “Units,” “capital,” or “equity stake,” create an ambiguity in the parties’ intent over the use of such terms. The differences in these phrases create a factual issue and are not a sufficient basis on which to grant summary judgment.

For these reasons, Defendants’ Motion for Partial Summary Judgment is **DENIED**.

SO ORDERED this 11th day of December, 2013.


 ELIZABETH E. LONG, SENIOR JUDGE
 Superior Court of Fulton County
 Atlanta Judicial Circuit

Copies to:

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