

Docketed

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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2182CV0603

E STREET LLC

vs.

TOWN OF BRAINTREE & another¹

7/27/2021
RECEIVED & FILED
CLERK OF THE COURTS
NORFOLK COUNTY

**DECISION AND ORDER ON PLAINTIFF'S MOTION
FOR A PRELIMINARY INJUNCTION**

The plaintiff, E Street LLC (E Street), requests that this court enter a preliminary injunction preventing the defendant, the Town of Braintree (Town), from terminating E Street's construction contracts concerning the skating rink and swimming pool at the Braintree High School, issuing an RFP or entering into any agreements with any other parties concerning the construction, and maintaining the Stop Work Order concerning the construction. After a hearing on July 19, 2021, as well as review of E Street's motion and supporting documents as well as the Town's opposition and supporting documents, the motion is **DENIED**.

E Street has failed to demonstrate a likelihood of success of the merits on either of its claims against the Town, breach of contract and breach of the implied covenant of good faith and fair dealing. See *Tri-Nel Management, Inc. v. Board of Health of Barnstable*, 433 Mass. 217, 219 (2001) (to obtain a preliminary injunction, a plaintiff must show, among other things, a likelihood of success on the merits). In order to prevail on a breach of contract claim, a plaintiff must prove the existence of a valid contract, it was ready, willing, and able to perform its obligations under the contract, a breach of the contract by the defendant, and damages. See *Bulwer v. Mount Auburn Hosp.*, 473 Mass. 672, 690 (2016). E Street has not demonstrated a

¹ Mayor Charles C. Kokoros, individually and as trustee of the Petersen Trust

likelihood of success on the second element of its breach of contract claim, specifically that it performed its obligations under the contract.

First, pursuant to the contract, E Street was required to notify the Town of any unavoidable delay, but did not do so in the appropriate fashion under the contract. Second, E Street, even to this day, has failed to provide a written commitment for financing, also a requirement of the contract. E Street provided the court with an affidavit from Michael Garrity (Garrity), Manager of RF Boston LLC, a Massachusetts-based real estate and finance company. Garrity's affidavit indicates that he has been working with E Street in approving a financial commitment, and that the documentation needed for financing is "on the way to underwriting". This is by no means a written commitment for financing. Third, various deadlines were not met by E Street pursuant to the contract.

E Street also has a claim for breach of the implied covenant of good faith and fair dealing. "Every contract implies good faith and fair dealing between the parties to it. . . . The implied covenant of good faith and fair dealing provides that neither party shall do anything that will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. . . ." *Anthony's Pier Four, Inc. v. HBC Assocs.*, 411 Mass. 451, 471 (1991) (internal quotations and citations omitted). "This implied covenant may not be 'invoked to create rights and duties not otherwise provided for in the existing contractual relationship,' but rather concerns the manner of performance." *Ayash v. Dana-Farber Cancer Inst.*, 443 Mass. 367, 385 (2005), cert. denied, *Globe Newspaper Co. v. Ayash*, 546 U.S. 927 (2005) (citation omitted). "A breach occurs when one party violates the reasonable expectations of the other." *Chokel v. Genzyme Corp.*, 449 Mass. 272, 276 (2007).

To succeed on this claim, E Street has the burden of showing a lack of good faith. See *T.W. Nickerson, Inc. v. Fleet Nat. Bank*, 456 Mass. 562, 570 (2010). Looking at the entire record and considering all of the facts and circumstances set out in the record, including the multiple meetings between E Street and the Town, the court cannot conclude that E Street is likely to show that the Town has not acted in good faith. The record shows that the Town made efforts to work with E Street during the course of their dealings and did not act in bad faith. In addition, the court must also consider E Street's failures under the contract as set out above.

Because E Street has failed to demonstrate a likelihood of success on the merits on either of its claims, the court will not balance any purported harms to either E Street or the Town.

Failure to establish a likelihood of success on the merits is fatal to the request for a preliminary injunction. *Ahern v. Wainwright Bank & Trust Co.*, 2010 WL 4967444 at *3 (Mass. Super. 2010) (Fabricant, J.).

ORDER

For the foregoing reasons, the plaintiff's motion for a preliminary injunction is **DENIED**.



Mark A. Hallal
Justice of the Superior Court

DATE: July 27, 2021