

THURSDAY, FEBRUARY 11, 2016

LA Jury to Russian tycoon: nyet

By America Hernandez
Daily Journal Staff Writer

A Russian billionaire promised the “Rolls Royce of windows” for her sprawling 65,000 square foot Moscow family home lost at trial this week — her \$18 million fraud and negligent misrepresentation claims were denied and she is instead ordered to pay \$1.3 million in outstanding invoices.

After settling with other parties she accused of padding consulting contracts to the tune of hundreds of thousands of dollars, plaintiff Marina Moskovenko sued Fenestra America LLC for allegedly building the wrong windows and lying about their quality, forcing her to put her \$80 million luxury project on hold since 2010, according to the complaint. *Marina Moskovenko v. Finton International Construction Consultants LLC et al*, BC503087 (L.A. Super. Ct., filed March 15, 2013)

Moskovenko retained Carmen A. Trutanich, of counsel at Tucker Ellis LLP and former Los Angeles city attorney, who did not respond to requests for comment.

“We were able to use her own declarations and discovery responses to establish that she changed her position,” said defense counsel Theodore L. Senet, a senior partner at Gibbs Giden Locher Turner Senet & Wittbrodt LLP. “She approved dual glaze windows, installed some of the product, then decided to reject the goods because only triple glaze was good enough for her house.”

In 2008, Moskovenko contracted with Fenestra to manufacture hundreds of floor-to-ceiling windows and doors that could insulate against Moscow winters for a palatial estate she was building in the countryside.

Los Angeles architect Richard Landry designed the home, while John Finton, a defendant who settled before trial, acted as construction consultant.



The 65,000 square foot mansion outside of Moscow at the center of the window litigation.

At the time, the Russian market used triple-glazed windows, which have three thin panes of glass separated by air chambers that help keep out the cold.

Because triple glaze is heavier and causes distortion when looking through the window, Fenestra suggested a double-glazed product that separated two thicker glass panes with argon, a gas with superior insulation properties.

Upon delivery of five sample windows, Moskovenko put them to the test — literally.

“Concerned about Fenestra’s and the Finton Defendants’ failure to provide test data... Plaintiff sent sample windows to the Russian Academy of Construction Physics, the leading authority on the [insulation] standard in Russia, for testing,” the complaint reads.

“Plaintiff learned for the first time through the RACP’s report dated May 14, 2010 ... that the Fenestra defendants’ windows’ heat insulation...was well below the insulation requirement Plaintiff required and which the Fenestra Defendants agreed to provide,” it added.

Senet said key evidence at trial involved showing that leading experts on the thermal insulation of windows from the Lawrence Livermore National Laboratory at the University of California, Berkeley found that Fenestra’s product exceeded those standards.

The defense also was able to show that while Moskovenko claimed Landry and Finton, who approved the windows, were not her agents, she had claimed the opposite in her initial complaint by seeking to hold them liable for breaching their duties as agents.

Finton Constructional International Inc. had settled undisclosed kickback claims before trial for about \$600,000 and executed a stipulated judgment in Moskovenko’s favor, Senet said.

Eoin L. Kreditor, counsel to the Finton defendants and partner at Fitz-Gerald Yap Kreditor LLP in Irvine, confirmed his client settled before trial but declined to state the amount. “Mr. Finton testified at trial that he was not her agent, but we were able to impeach him by telling the jury he had a \$400,000 ball and chain around his neck in unmade payments to the plaintiff,” Senet said. “It came down to an issue of credibility.”

Fenestra was awarded \$1.325 million, the outstanding amount on the invoice plus incidental damages and interest. Attorney’s fees and costs of suit will be determined by the court at a later date.

Victor F. Luke and Brendan B. Penney, partners at Gibbs Giden Locher Turner Senet Wittbrodt LLP, also represented Fenestra at trial.