

**Wonder Works Constr. Corp. v Bridgeton Amirian
13th St., LLC**

2020 NY Slip Op 34143(U)

December 8, 2020

Supreme Court, New York County

Docket Number: 654926/2019

Judge: Margaret A. Chan

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARGARET A. CHAN PART IAS MOTION 33EFM

Justice

-----X

INDEX NO. 654926/2019

WONDER WORKS CONSTRUCTION CORP.,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. (MS) 004

- v -

BRIDGETON AMIRIAN 13TH STREET, LLC, BRIDGETON AMIRIAN 436 LLC, BRIDGETON AMIRIAN 442 LLC, DAVID AMIRIAN, COD MECHANICAL CORP., G.A. WINDOWS, INC., D/B/A ADLER WINDOWS, INC., NCC360 LLC, NSI STONE TRADING INC., HEIBERG ENGINEERING AND FORENSIC SERVICES, JOHN DOE 1 THROUGH JOHN DOE 10

DECISION + ORDER ON MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 116, 117, 118, 119 were read on this motion to/for CPLR 902 CLASS CERTIFICATION.

In this mechanic's lien foreclosure action, plaintiff Wonder Works Construction Corp. (Wonder Works) moves to certify a class of similarly situated plaintiffs pursuant to CPLR 902. Defendants in this matter are Bridgeton Amirian 13th Street, LLC (Bridgeton), Bridgeton Amirian 436 LLC (436 LLC), Bridgeton Amirian 442 LLC (442 LLC), David Amirian (collectively the Amirian defendants), COD Mechanical Corp, G.A. Windows, Inc. d/b/a Adler Windows, Inc., NCC360 LLC, NSI Stone Trading Inc., Heiberg Engineering and Forensics Services (collectively the sub-contractor defendants), and John Does 1-10. The motion is unopposed. The motion is granted as follows:

Plaintiff Wonder Works is a general contractor that entered into an agreement on November 30, 2014 with Bridgeton to engage in a construction project consisting of the development of two six-story buildings located at 436 East 13th Street, New York, NY, Block 440, Lot 26 and 442 East 13th Street, New York, NY, Block 440, Lot 29 (collectively the properties). Plaintiff alleges that it is owed a balance of \$286,293.28 by Bridgeton.

Plaintiff alleges that 436 LLC and 442 LLC obtained financing for the construction project and that, pursuant to New York Lien Law Art. 3-A, the financing funds are to be construed as trust funds to be used for the trust, in this instance, the construction project. Plaintiff further alleges that 436 LLC and 442

LLC are trustees of the trust pursuant to Lien Law 3-A. Plaintiff further claims that Bridgeton obtained trust funds from 436 LLC and 442 LLC to be applied to the project, and is therefore a trustee of the trust.

Plaintiff further claims that David Amirian had authority to disburse trust funds and enter into contracts on behalf of 436 LLC and 442 LLC, and was responsible for such. Plaintiff claims that pursuant to Lien Law 3-A, David Amirian is a trustee of the trust. Plaintiff claims that trust funds were diverted, causing injury to it and other trust beneficiaries.

Plaintiff argues that pursuant to Lien Law 3-A, as an owner of claims against the Amirian defendants for nonpayment of monies owed for labor and materials supplied to defendants for the project, plaintiff is therefore a beneficiary of the trust fund. Plaintiff additionally argues that the subcontractor defendants are also beneficiaries of the trust fund. Plaintiff also claims that there may be additional beneficiaries of the trust who are currently unknown to plaintiff. Plaintiff brings this action on behalf of itself and similarly situated beneficiaries of the trust fund.

Lien Law § 77 provides that a trust under that article may be enforced by the holder of any trust claim, including any person subrogated to the right of a beneficiary of the trust holding a trust claim, in a representative action brought for the benefit of all beneficiaries of the trust (Lien Law § 77). Lien Law § 77 additionally states that:

“the practice, pleadings, forms and procedures shall conform as nearly as may be to the practice, pleadings, forms and procedure in a class action as provided in article nine of the civil practice law and rules; provided however that in determining whether the prerequisites of a class action have been satisfied, the provisions of paragraph one of subdivision (a) of section nine hundred one of such law and rules may be waived at the discretion of the court.”

(*Id.*).

Pursuant to CPLR § 901(a), a court may certify a proposed class only if: (1) the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; (2) there are questions of law or fact common to the class which predominate over any questions affecting only individual members; (3) the claims or defense of the representative parties are typical of the claims or defenses of the class; (4) the representative parties will fairly and adequately protect the interests of the class; and (5) a class action is superior to other available methods for the fair and efficient adjudication of the controversy (CPLR § 901).

The proponent of class certification bears the burden of tendering admissible evidence to establish the above criteria (*see Pludeman v. Northern Leasing Sys., Inc.*, 74 AD3d 420, 422 [1st Dept 2010]).

Additionally, the court must consider pursuant to CPLR § 902: (1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) the impracticability or inefficiency of prosecuting or defending separate actions; (3) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (4) the desirability or undesirability of concentrating the litigation of the claim in the particular forum; (5) the difficulties likely to be encountered in the management of a class action (CPLR § 902).

As for the CPLR § 901 requirements, in this action involving a single construction project, there are questions of law or fact common to the class that predominate over any questions affecting only individual members. Other beneficiaries of the trust have allegedly been injured here due to unauthorized disbursements from the trust and resolving these issues in a common suit is efficient and will prevent inconsistent decisions.

Next, the claims or defenses of the representative party are typical of the claims or defenses of the class. Wonder Works asserts claims that the Amirian defendants made improper disbursements that have injured it, a claim that is applicable class-wide.

Plaintiff, as representative party, will fairly and adequately protect the interests of the class. Finally, a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

As for the CPLR § 902 requirements, there are no issues that militate against granting the application for class certification.

Accordingly, it is ORDERED that the motion for class certification by plaintiff Wonder Works on behalf of itself and all others similarly situated, is granted; it is further


ORDERED that this action is certified as a class action on behalf of all persons who are or were beneficiaries of the Amirian defendants construction trust fund; it is further

ORDERED that plaintiff Wonder Works is appointed as class representative; it is further

ORDERED that plaintiff's counsel Ronald Francis, Esq. be appointed as class counsel; and it is further

ORDERED that the parties appear for a telephonic compliance conference on January 12, 2021 at 10:00 am.

This constitutes the Decision and Order of the court.

<u>12/8/2020</u> DATE					 MARGARET A. CHAN, J.S.C.	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER
					<input type="checkbox"/>	OTHER