

**Stanton v Dragonetti Bros. Landscaping Nursery &
Florist Inc.**

2023 NY Slip Op 30678(U)

March 3, 2023

Supreme Court, New York County

Docket Number: Index No. 651480/2022

Judge: Lyle E. Frank

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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RYAN STANTON, KELLIANNE HILLOCKS, JEFFREY HUMPHREY,

Plaintiff,

INDEX NO. 651480/2022

MOTION DATE N/A

MOTION SEQ. NO. 002

- v -

DRAGONETTI BROTHERS LANDSCAPING NURSERY & FLORIST INC., D.B. DEMOLITION, INC., NICHOLAS DRAGONETTI, VITO DRAGONETTI, INTERNATIONAL FIDELITY INSURANCE COMPANY

Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for DISMISSAL.

Defendants move to dismiss the class claims in this action. Plaintiffs cross-move seeking an extension of time to move for class certification.¹

Facts

Plaintiffs brought this action to recover on behalf of themselves and a putative class of all persons employed by defendants Dragonetti Brothers Landscaping Nursery & Florist Inc. ("DBLNF") or D.B. Demolition Inc. ("D.B. Demolition") who worked as non-union flaggers on Public Works Projects in the State of New York during the relevant period (the "Putative Class")

Throughout their respective employment periods with defendants, plaintiffs claim they were not paid the applicable prevailing rate of wages or supplemental benefits for labor they furnished on the Public Works Projects. The plaintiffs seek to recover for prevailing wages, daily

¹ The Court would like to thank Tristan Wanatick for his assistance in this matter.

overtime and supplemental benefits they say were contractually and statutorily entitled to receive for work, including weekend, evening and holiday work, they performed on the sites of the Public Works Projects. In addition, plaintiffs seek to recover unpaid overtime premium wages and wage notification violations pursuant to the New York Labor Law (“NYLL”) §§ 190 et seq. on behalf of themselves and a CPLR § 901 class of all persons employed by Defendants at any time since August 14, 2015, who worked as non-union flaggers on Public Works Projects in the State of New York.

Plaintiffs say they have at all times intended to pursue their claims on behalf of the Putative Class and were under the good-faith assumption that a pre-certification discovery schedule would be set by the Court to permit necessary discovery prior to plaintiffs having to move for class certification. Counsel of plaintiffs’ requested a preliminary conference with the Court prior to the deadline set forth in CPLR § 902. Plaintiffs contend that they need to conduct discovery to determine whether the prerequisites of a class action set forth in CPLR § 901(a) may be satisfied.

Applicable Law

CPLR § 902 requires that a motion for class certification be made within 60 days “after the time to serve a responsive pleading has expired for all persons named as defendants.” In response to the plaintiffs’ failure to move for class certification within the required 60 days and their failure to obtain an extension of time to do so, defendant International Fidelity Insurance Company (“International”) filed a motion to dismiss the Amended Complaint’s class allegations. Defendants’ argue that plaintiffs’ have not demonstrated good cause for this delay and therefore have violated the statute.

In *Rodriguez v. Metro Cable Communications*, the Court opined that to move for class certification, courts have discretion to extend the deadline upon good cause shown. *Rodriguez v. Metro Cable Communications*, 79 A.D.3d 842-843 (2d Dept. 2010) (citing *Argento v. Wal-Mart Stores, Inc.*, 66 A.D.3d 930, 888 N.Y.S.2d 117 (2009)). Good cause includes “the plaintiff’s need to conduct preclass certification discovery to determine whether the prerequisites of a class action set forth in CPLR 901(a)(3) may be satisfied. *Rodriguez*, 79 A.D.3d at 842-43.

Discussion

In the issue at hand, plaintiffs require information within defendants’ knowledge such as the number of putative class members throughout the last six years, the rates paid to putative class members and the projects worked on by putative class members during the last six years. Despite plaintiffs attempt to request a preliminary conference prior to the CPLR § 902 deadline, in order to set an agreed-to pre-certification discovery schedule and revised deadline for filing plaintiffs’ class certification motion, the conference was not able to be held prior to the 60 day deadline. The information sought, in the sole possession of defendants, would allow plaintiffs to determine the “dimensions of the group of individuals who share plaintiffs’ grievance” of failure to be paid the appropriate prevailing wages and failure to be provided wage notices. *See Rodriguez*, 79 A.D.3d at 842-43.

While defendants’ argue that plaintiffs’ cannot get an extension on the motion due to the original deadline passing, CPLR § 2004 specifically permits applications “after the expiration of the time fixed.” Under CPLR § 2004, “the Court may extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed.” The Court

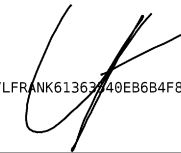
finds that Plaintiffs’ motion was made expeditiously, following plaintiffs’ good faith attempts to avoid burdening the Court by requesting defendants’ stipulate to the extension and holding a meet-and-confer on the issue, which International apparently refused.

After assessing the procedural as well as factual history of this case, and upon reading the Memorandum of Law in support of plaintiffs’ cross motion, dated January 10, 2023, the Affirmation of Taylor B. Graham, Esq., dated January 10, 2023, in support of plaintiffs’ cross motion, along with all exhibits provided herein, this Court finds that plaintiffs have successfully demonstrated good cause under CPLR § 2004 for their failure to move for class certification within the required 60-day time frame. In addition, this Court finds that defendants have not suffered any undue prejudice by this delay in the initial proceedings of this litigation. Thus, it is hereby

ORDERED that plaintiffs’ cross motion to extend their time to move for class certification under CPLR § 2004 is granted, and the plaintiffs shall have an additional 180 days to move for class certification; and it is further

ADJUDGED that defendants’ motion to dismiss the Amended Complaint’s class allegations is denied; and it is further

ORDERED that the parties are directed to appear for a preliminary conference on March 21 at 11 a.m. via Microsoft Teams.

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LYLE E. FRANK, J.S.C.

3/3/2023
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
 REFERENCE