

**Albin Gustafson Co. v NYU Langone Hosps.**

2026 NY Slip Op 30448(U)

February 6, 2026

Supreme Court, New York County

Docket Number: Index No. 161024/2024

Judge: Leslie A. Stroth

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

-----X

ALBIN GUSTAFSON COMPANY,
Plaintiff,

INDEX NO. 161024/2024

MOTION DATE N/A

MOTION SEQ. NO. 001

- v -

NYU LANGONE HOSPITALS, CALDWELL & WALSH
BUILDING CONSTRUCTION, INC., M & J MECHANICAL
CORP., GBHLS, LLC, CHELSEA FLOOR COVERING
ACQUISITION CORP., COMMODORE CONSTRUCTION
CORP., OLYMPIC PLUMBING & HEATING SERVICES
INC., MANHATTAN INTERIOR CONTRACTING CO.,
INC., MICHAEL T. FERRONE, JOHN DOE ONE THROUGH
JOHN DOE TEN.

AMENDED
DECISION + ORDER ON
MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 38, 39, 40, 41, 42,
43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70,
72, 74, 77

were read on this motion to/for JUDGMENT - DEFAULT

The instant action arises from electrical work performed by Plaintiff at a construction
project, located 301 East 17th Street, New York, New York (the "Project"). Plaintiff asserts that
it contracted with Defendant Caldwell & Walsh Building Construction, Inc. ("Caldwell &
Walsh") to provide electrical labor and material for the sum of \$1,124,561.06, of which
\$622,149.17 remains due. Plaintiff alleges that Caldwell & Walsh received and held funds from
the owner of the Premises, which were to be used to pay for the labor and materials provided by
sub-contractors, including Plaintiff, on the Project. Plaintiff asserts that the funds received by
Caldwell & Walsh were trust funds, pursuant to Lien Law Article 3-A, and that Defendants
Caldwell & Walsh and Michael T. Ferrone caused those trust funds to be diverted and disbursed

to “persons, firms or corporations who were not beneficiaries of the trust” (NYSCEF Doc. No. 2, ¶61).

The complaint asserts claims for breach of contract, account stated, quantum meruit against Defendant Caldwell & Walsh. Plaintiff also asserts a claim for mechanic’s lien foreclosure against Defendants NYU Langone Hospitals (“NYU Langone”), Caldwell & Walsh, M&J Mechanical Corp. (“M&J”), GBHLS, LLC (“GBHLS”), Chelsea Floor Covering Acquisition Corp. (“Chelsea Floor”), Commodore Construction Corp. (“Commodore”), Olympic Plumbing & Heating Services Inc. (“Olympic Plumbing & Heating”), and Manhattan Interior Contracting Co. (“Manhattan Interior”). Additionally, Plaintiff asserts a claim for trust fund diversion, under Lien Law Art. 3-A against Defendants Caldwell & Walsh and Michael T. Ferrone.

Plaintiff now moves (1) to maintain the matter as an Article 3-A class action, pursuant to Lien Law § 77(1); (2) for default judgment against Defendants Caldwell & Walsh and Michael T. Ferrone; and (3) waiver of the mechanics liens of Defendants GBHLS, Olympic Plumbing & Heating, and Manhattan Interior for failure to appear in this action, pursuant to Lien Law § 44(5). Defendants did not oppose Plaintiff’s motion.

By Order dated June 10, 2025, the Court previously denied the instant motion as moot pursuant to a stipulation withdrawing the motion. However, as that stipulation only addressed Defendant GBHLS, the June 10, 2025 order is vacated and superseded by this order.

## DISCUSSION

### A. Lien Law Article 3-A Class Certification

“Article 3-A of the Lien Law creates trust funds out of certain construction payments or funds to assure payment of subcontractors, suppliers, architects, engineers, laborers, as well as

specified taxes and expenses of construction” (*Aspro Mech. Contr. V Fleet Bank*, 1NY3d 324, 328 [2005] [internal quotation marks and citations omitted]). The primary purpose of Article 3-A is “to ensure that those who have directly expended labor and materials to improve real property . . . at the direction of the owner or a general contractor receive payment for the work actually performed” (*Matter of RLI Ins. Co., Sur. Div. v New York State Dept. of Labor*, 97 NY2d 256, 264 [2002]). Pursuant to § 70(2) of the Lien Law, funds received by an owner or general contractor in connection with each improvement constitute a separate trust and the owner or general contractor is the trustee of those funds (*see ECD NY, Inc. v Britt Realty LLC*, 47 Misc 3d 923, 926 [Sup Ct, Kings County 2015]). Once a trust comes into existence under Article 3-A “its funds may not be diverted for non-trust purposes” (*RLI Ins.*, 97 NY2d at 264).

Lien Law § 77(1) permits any party with a trust claim to bring an action to enforce the claim on behalf of all potential beneficiaries (*see Fred Geller Electrical, Inc. v Battery Park City Authority*, 2002 NY Slip Op 50273(U) [1st Dept 2002]). Under Lien Law § 77(1), an Article 3-A action for the alleged diversion of trust funds “should be brought by a representative action for the benefit of all beneficiaries of the trust, and ‘the practice, pleadings, forms and procedure shall conform as nearly as may be to the practice, pleadings, forms and procedure in a class action as provided in article none of the civil practice law and rules (*Atlas Bldg. Sys. V Rende*, 236 AD2d 494, 496 [2d Dept 1997], *quoting* Lien Law §77[1]).

CPLR 901(a) permits class certification if “(1) the class is so numerous that joinder of all members . . . is impracticable; (2) questions of law or fact common to the class . . . predominate over any questions affecting only individual members; (3) the claims or defenses of the representative parties are typical of [those] 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 the available other methods for the fair and efficient adjudication of the controversy.”

Here, Plaintiff alleges that the owner of the Project paid monies to Caldwell & Walsh, which were intended to be paid to subcontractors, including Plaintiff, and that Caldwell & Walsh failed to pay Plaintiff. Accordingly, the funds paid to Caldwell & Walsh are trust assets and Caldwell & Walsh is a trustee. Plaintiff is also a beneficiary entitled to bring an action to enforce the claim on behalf of the other beneficiaries (*see* Lien Law §71[4] [“Persons having claims for payment of amounts for which the trustee is authorized to use trust assets as provided in this section are beneficiaries of the trust whether or not they have filed . . . a notice of lien . . .”]).

Additionally, Plaintiff has established the above factors required for class action certification: (1) though Plaintiff has not identified other class members, the numerosity requirement under CPLR 901(a) may be waived in Article 3-A actions, and courts have found that a plaintiff’s failure to identify any similarly situated parties as potential class members is not fatal to a claim and may be cured by furnishing notice of the claim to other potential class members (*see Atlas*, 236 AD2d at 496; *GPK 31-19 LLC v L & L Constr. Dev. Inc.*, 2018 WL 4509444, \*1-4 [Sup Ct, NY County 2018]; *ADCO Elec. Corp. v McMahon*, 38 AD3d 805, 807 [2d Dept 2007]; *see also* Lien Law § 77(1)); (2) there are common questions of law or fact, which predominate over questions affecting only individual members, as the proposed class members are beneficiaries of the trust arising from the work and material provided for the Project; (3) this claim is typical of other potential class members who provided work and material for the Project and were not paid; (4) Plaintiff will fairly and adequately protect the interests of the class because it has a direct interest in the outcome; and (5) a class action is the superior method, and

is favored in cases like this, as “it eliminates the risk of inconsistent determinations of the claims of the individual members of the class and avoids the unnecessary costs and delays of multiple lawsuits” (*ECD NY, Inc.*, 47 Misc3d at 927).

Plaintiff also timely moved to maintain this action as a class action. CPLR § 902 requires that “[w]ithin sixty days after the time to serve a responsive pleading has expired for all persons named as defendants in an action brought as a class action, the plaintiff shall move for an order to determine whether it is to be so maintained.” Here, the time to serve responsive pleadings for all defendants expired on February 16, 2025. The instant motion was filed on March 11, 2025, well within the sixty days required under CPLR § 902.

Therefore, this action may be maintained as a class action and the class shall consist of all beneficiaries of the Lien Law Article 3-A trust funds received by Caldwell & Walsh Building Construction, Inc. in connection with the Project.

### **B. Default Judgment**

When a party fails to appear or answer, its adversary may seek a default judgment from that party (CPLR 3215[a]). In order to obtain a default judgment pursuant to CPLR 3215 a movant must provide proof of service of the summons and complaint and proof of the facts constituting the claim (CPLR 3215[f]; *see Gantt v North Short-LIJ Health System*, 140 AD3d 418 [1st Dept 2016]). “Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action. The standard of proof is not stringent, amounting to only some firsthand confirmation of the facts” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]).

Here, Plaintiff provides the affidavit of Robert McCarthy, Plaintiff’s president, who affirms that Plaintiff provided labor and materials for the Project, pursuant to contract between

Plaintiff and Caldwell & Walsh. Mr. McCarthy further affirms that Michael T. Ferrone is the President of Caldwell & Walsh, and that Caldwell & Walsh owes Plaintiff \$622,149.17 for the labor and materials provided (*see* NYSCEF Doc. No. 40). Additionally, Plaintiff includes Caldwell & Walsh's statement of account for the Project, subcontract change orders, and checks from Caldwell & Walsh to Plaintiff (*see* NYSCEF Doc. No. 57).

As to service, Plaintiff provides affidavits of service on Caldwell & Walsh and Michael T. Ferrone, as well as affidavits of additional service required pursuant to CPLR 3215(g) (*see* NYSCEF Doc. Nos. 42-45).

Therefore, Plaintiff has provided the requisite proof of service and proof of facts with respect to Defendants Caldwell & Walsh and Michael T. Ferrone.

### **C. Waiver of Mechanic's Lien**

As an initial matter, Plaintiff has withdrawn the instant motion with respect to Defendant GBHLS, as they have appeared in the action (*see* NYSCEF Doc. Nos. 72). As to Olympic Plumbing & Heating and Manhattan Interior, plaintiff argues that their mechanic's liens should be deemed waived, pursuant to Lien Law §44(5), because they haven't appeared in the action.

Lien Law §44(5) provides, in relevant part, that "[e]very defendant who is a lienor shall, by answer in the action, set forth his lien, or he will be deemed to have waived the same, unless the lien is admitted in the complaint, and not contested by another defendant." Here, Olympic Plumbing & Heating and Manhattan Interior have failed to answer, Plaintiff did not admit their liens in the complaint, and there is no evidence presented that the liens are contested by another defendant. Therefore, the mechanic's liens of Olympic Plumbing & Heating and Manhattan Interior are waived (*see Interior Bldg. Servs., Inc. v Broadway 1384 LLC*, 73 AD3d 529, 529 [1st Dept 2010]; *Naber Elec. Corp. v. George A. Fuller Co., Inc.*, 62 AD3d 971 [2d Dept 2009]).

Accordingly, it is hereby

ORDERED that the decision and order dated June 10, 2025 is vacated and superseded by this decision and order; and it is further

ORDERED AND ADJUDGED that class certification is granted on behalf of Albin Gustafson Company, describing the class as all beneficiaries of the Lien Law Article 3-A trust funds received by Caldwell & Walsh Building Construction, Inc. in connection with the construction project, located 301 East 17th Street, New York, New York; and it is further

ORDERED AND ADJUDGED that Caldwell & Walsh Building Construction, Inc. shall furnish a list of all subcontractors, suppliers and other potential Article 3-A trust beneficiaries and their last known addresses to Albin Gustafson Company; and it is further

ORDERED AND ADJUDGED that the contents of the proposed notice to the class members, annexed to the moving papers as Exhibit P, is approved; and it is further

ORDERED AND ADJUDGED that notice to the class members shall be served by certified mail, return receipt requested; and it is further

ORDERED AND ADJUDGED that plaintiff's motion pursuant to NYS Lien Law §44(5), deeming that the Mechanics Liens of defendants Olympic Plumbing & Heating Services Inc. and Manhattan Interior Contracting Co. are waived, is granted; and it is further

ORDERED AND ADJUDGED that the motion for default judgment against defendants Caldwell & Walsh Building Construction, Inc. and Michael T. Ferrone is granted without opposition; and it is further

ORDERED that the damages attributable to the defaulting defendants is to be decided at an inquest, which is held in abeyance until after the time of trial in this action; and it is further


ORDERED that the Clerk of Court shall enter judgment accordingly; and it is further

ORDERED that counsel for Plaintiff shall serve a copy of this order along with Notice of Entry on all parties within twenty (20) days.

This constitutes the decision and order of the Court.

2/6/2026  
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<b>J.S.C.</b>
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	

  
**HON. LESLIE A. STROTH**  
**J.S.C.**