

Allen v Construction Directions, LLC

2018 NY Slip Op 30203(U)

February 5, 2018

Supreme Court, New York County

Docket Number: 158197/2017

Judge: Kathryn E. Freed

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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. KATHRYN E. FREED

PART 2

Justice

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TRAVIS ALLEN, GARTH BROWN, ON BEHALF OF
THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

INDEX NO. 158197/2017

Plaintiffs,

- v -

MOTION SEQ. NO. 001

CONSTRUCTION DIRECTIONS, LLC, BUILDING ENTERPRISE
SERVICES, INC., AND ALL OF THEIR AFFILIATED ENTITIES
AND SUCCESSORS, AND HOLLISTER CONSTRUCTION
SERVICES, LLC,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number 7, 8, 9, 10, 11, 12, 13, 14, 15,
16, 17

were read on this motion to/for EXTEND TIME

Upon the foregoing documents, it is ordered that the motion is granted.

Plaintiffs Travis Allen and Garth Brown, on behalf of themselves and others similarly situated, commenced this action against defendants Construction Directions, LLC (CD), Building Enterprise Services, Inc. (BES) and all of their affiliated entities and successors, and Hollister Construction Services, LLC (Hollister) seeking to recover, inter alia, unpaid wages and overtime pay. Plaintiffs now moves for an order, pursuant to CPLR 2004, for an extension of time to file their motion for class certification until such time that a preliminary conference has been held and this Court has set dates to 1) complete pre-class certification discovery; and 2) move for class certification. After a review of plaintiffs' motion papers and the relevant statutes and case law, the motion, which is unopposed, is **granted**.

Plaintiffs commenced the captioned action by filing a summons and complaint on September 13, 2017. Doc. 1.¹ CD, BES, and Hollister were served via the Secretary of State on September 14, 2017. Docs. 2-4. Thus, defendants had until October 14, 2017 to answer. See CPLR 3012 (c); Business Corporation Law 306(b)(1). However, CD and BES did not file their answer until December 8, 2017 (Doc. 6) and Hollister did not file an answer until January 8, 2018, after the instant motion was filed on December 20, 2017. Docs. 7, 18.

In their motion, plaintiffs acknowledge that a motion for class certification must be made “[w]ithin sixty days after the time to serve a responsive pleading has expired for all persons named as defendants . . .” CPLR 902. Here, the period to so move expired on December 14, 2017, sixty days after defendants’ time to answer expired. However, plaintiffs correctly assert that this Court has the discretion to extend the time to move for class certification upon good cause shown, and maintain that such good cause exists here, where discovery is necessary in order for them to determine whether they can establish the criteria, set forth in CPLR 901(a), for commencing a class action.²

“While class certification is an issue that should be determined promptly (see CPLR 902), a trial court has discretion to extend the deadline upon good cause shown” (*Rodriguez v Metropolitan Cable Communications*, 79 AD3d 841, 842, 913 NYS2d 292 [2010]; see CPLR 2004; *Argento v Wal-Mart Stores, Inc.*, 66 AD3d 930, 888 NYS2d 117 [2009]), such as the plaintiff’s need to conduct class certification discovery to determine whether the prerequisites of a class action set forth in CPLR

¹ Unless otherwise noted, all references are to the documents filed with NYSCEF in this matter.

² CPLR 901(a) provides that “One or more members of a class may sue or be sued as representative parties on behalf of all 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 defenses 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.”

901 (a) may be satisfied (*see Rodriguez v Metropolitan Cable Communications*, 79 AD3d at 842).

Chavarria v Crest Hollow Country Club at Woodbury, Inc., 109 AD3d 634, 634 (2nd Dept 2013).

This Court, in its discretion, grants plaintiffs' motion pursuant to CPLR 2004 to extend the 60-day time period fixed by CPLR 902 to move for class certification based on the plaintiffs' need to conduct class certification discovery. In reaching its decision, this Court considers that the instant motion was filed on December 20, 2017, only six days after plaintiffs' time to move expired. Thus, plaintiffs' "very brief delay [in moving for an extension of time] was minimal." *Gerard v Clermont York Assoc., LLC*, 143 AD3d 478, 478 (1st Dept 2016). Further, plaintiffs could not have requested a preliminary conference until issue was joined, and the answers of all three defendants were untimely. Moreover, since the instant motion is unopposed, no party has demonstrated that it would be prejudiced if plaintiffs were granted the requested extension of time. *See Gerard*, 143 AD3d at 478.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that plaintiffs' motion for an order extending their time to move for class certification is granted; and it is further

ORDERED that the attorneys for the parties shall appear in Part 2, 80 Centre Street, Room 280, on May 8, 2018, at 2:15 for a preliminary conference at which a pre-certification discovery schedule will be set and plaintiffs' time for moving for class certification will be determined; and it is further

ORDERED that this constitutes the decision and order of the court.

2/5/2018
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

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|-------------------------------------|--------------------------|--------------------------|--------|-------------------------------------|-----------------------|--------------------------|-----------|
| <input type="checkbox"/> | CASE DISPOSED | <input type="checkbox"/> | DENIED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | <input type="checkbox"/> | OTHER |
| <input checked="" type="checkbox"/> | GRANTED | | | <input type="checkbox"/> | GRANTED IN PART | | |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | | <input type="checkbox"/> | SUBMIT ORDER | | |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | DO NOT POST | | <input type="checkbox"/> | FIDUCIARY APPOINTMENT | <input type="checkbox"/> | REFERENCE |