

<b>Perez v Wise Elec. Servs., Inc.</b>
2018 NY Slip Op 30215(U)
February 5, 2018
Supreme Court, New York County
Docket Number: 158511/2017
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED
Justice

PART 2

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LENNY PEREZ, INDIVIDUALLY AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED WHO WERE EMPLOYED BY WISE ELECTRICAL SERVICES, INC., WITH RESPECT TO A PUBLIC WORKS PROJECT PERFORMED AT JOHN JAY COLLEGE IN THE CITY OF NEW YORK,

INDEX NO. 158511/2017

Plaintiff,

MOTION SEQ. NO. 001

- v -

WISE ELECTRICAL SERVICES, INC., WHALEN CONSTRUCTION, INC., JOHN DOE BONDING COMPANY

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

were read on this motion to/for EXTEND TIME

Upon the foregoing documents, it is ordered that the motion is granted without opposition.

Plaintiff Lenny Perez, individually and on behalf of all other persons similarly situated who were employed by Wise Electrical Services, Inc. with respect to a Public Works Project performed at John Jay College in the City of New York, commenced this action against defendant Wise Electrical Services, Inc., Whalen Construction, Inc. and John Doe Bonding Company seeking to recover, inter alia, unpaid wages and benefits. Plaintiff moves for an order, pursuant to CPLR 2004, for an extension of time to file his 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) for plaintiff to move for class certification. After a review of the motion papers and the relevant statutes and case law, the motion is granted.

The captioned action was commenced by plaintiff by filing a summons and complaint on September 25, 2017. Doc. 1.<sup>1</sup> Defendants Wise Electrical Services, Inc. (Wise) and Whalen Construction, Inc. (Whalen) were served via the Secretary of State of September 26, 2017. Docs. 2 and 3. Thus these defendants had until 30 until days after September 25, 2017 to answer. See CPLR 3012 (c); Business Corporation Law 306(b)(1).. Although Whalen timely joined issue by service of its answer filed October 18, 2017 (Doc. 4), Wise has not answered and its time to do so expired on October 25, 2017.

Plaintiff now moves for an order, pursuant to CPLR 2004, for an extension of time to file a 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) for him to move for class certification. In his motion, which is unopposed, plaintiff acknowledges 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. However, he correctly asserts that this Court has the discretion to extend the time to move for class certification upon good cause shown, and maintains that such good cause exists here, where discovery is necessary in order for him to determine whether he can establish the criteria, set forth in CPLR 901(a), for commencing a class action.<sup>2</sup>

“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”

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

<sup>2</sup> 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.”

(*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 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 plaintiff's motion pursuant to CPLR 2004 to extend the 60-day time period fixed by CPLR 902 to move for class certification based on the plaintiff's need to conduct class certification discovery. In reaching its decision, this Court considers the fact that plaintiff had 60 days from the expiration of defendants' time to answer within which to move. Although Whalen served a timely answer, Wise did not answer and its time to do so expired on October 25, 2017. Thus, plaintiff had until December 25, 2017 to file the instant motion for an extension of time. Although the instant motion was not filed until January 3, 2018, just over one week late, plaintiff's "very brief delay [in moving for an extension of time] was minimal." *Gerard v Clermont York Assoc., LLC*, 143 AD3d 478, 478 (1<sup>st</sup> Dept 2016). Further, since the motion has not been opposed, no party has demonstrated that any prejudice would result from granting the motion. See *Gerard*, 143 AD3d at 478.

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

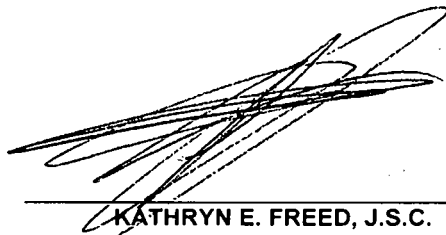
ORDERED that plaintiff's motion for an order extending his time to move for class certification is granted; and it is further

ORDERED that the attorneys for the appearing 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 plaintiff's 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:

CASE DISPOSED  
GRANTED  
SETTLE ORDER  
DO NOT POST

DENIED

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: