

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

L.C. Whitford Co., Inc. v. Babcock & Wilcox Solar Energy, Inc.

2025 NY Slip Op 07063 · No. CV-24-2057 · Decided December 18, 2025

SUMMARY

The New York Appellate Division, Third Department, affirmed a preliminary injunction preventing Babcock & Wilcox Solar Energy, Inc. from using settlement funds to reimburse itself for amounts it had advanced to subcontractors. The majority held that the settlement proceeds were trust assets under Lien Law article 3-A and that a contractor-trustee could not apply them to its own reimbursement before satisfying statutory trust claims. Two judges dissented, concluding that later-received trust funds could reimburse earlier payments made for proper trust purposes.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Lynch, J.; Garry, P.J.; Ceresia, J.; Fisher, J.; Mackey, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	December 18, 2025
DOCKET	CV-24-2057
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order granting plaintiffs' motion for a preliminary injunction under New York Lien Law article 3-A.
STANDARD OF REVIEW	Abuse of discretion review of the issuance of a preliminary injunction.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion; majority opinion affirming preliminary injunction.
PARTIES	Babcock & Wilcox Solar Energy, Inc., formerly known as Fosler Construction Company, Inc. v. L.C. Whitford Co., Inc., et al.

TOPICS

- construction law
- trusts
- trustee duties
- equitable relief
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether settlement funds paid to a general contractor in connection with construction projects constitute trust assets under New York Lien Law article 3-A.
2. Whether a contractor-trustee may use subsequently received trust assets to reimburse itself for funds it previously advanced to pay subcontractors and other project-related costs.
3. Whether Supreme Court properly enjoined BWS from dispersing the settlement funds pending further court approval.

HOLDINGS

1. Settlement funds paid to BWS in connection with the construction projects constituted trust funds under Lien Law article 3-A.
2. A contractor-trustee may not use Article 3-A trust assets to reimburse itself for money advanced on the project before receipt of the trust assets; doing so would breach its fiduciary duties and improperly divert trust assets.
3. Supreme Court properly exercised its discretion by enjoining BWS from utilizing or dispersing the settlement funds pending further court approval.

KEY QUOTATIONS

“Article 3-A of the Lien Law impresses with a trust any funds paid or payable to a contractor 'under or in connection with a contract for an improvement of real property'” ([*1])

“In short, BWS has no authority to reimburse itself with the settlement funds for moneys advanced on the project and doing so would be a breach of its fiduciary duties as a trustee.” ([*2])

FACTUAL BACKGROUND

Babcock & Wilcox Solar Energy, Inc. was the general contractor for three solar photovoltaic projects, and L.C. Whitford and other plaintiffs performed work as subcontractors. BWS and the project owners entered into a settlement requiring payment of \$4,978,477 to BWS, including \$1,264,470 associated with termination of the three projects. After BWS stated that it intended to use the settlement funds to reimburse itself for costs it had advanced to subcontractors, plaintiffs sought to enforce the statutory trust and prevent diversion of the funds; the validity of plaintiffs' liens remained subject to separate litigation.

PROCEDURAL HISTORY

Plaintiff subcontractors commenced an action under Lien Law § 77 to enforce a trust and prevent Babcock & Wilcox Solar Energy, Inc. from distributing settlement funds received from project owners. Supreme Court, St. Lawrence County, granted a preliminary injunction prohibiting BWS from dispersing the funds without further court order and required plaintiffs to post a \$50,000 undertaking. BWS appealed, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of RLI Ins. Co., Sur. Div. v. New York State Dept. of Labor, 97 N.Y.2d 256, 263-264 (2002)
- LeChase Data/Telecom Servs., LLC v. Goebert, 6 N.Y.3d 281, 289 (2006)
- Aspro Mech. Contr. v. Fleet Bank, 1 N.Y.3d 324, 328-329 (2004)
- Harmon v. Fairview Assoc., 25 N.Y.2d 101, 105 (1969)
- Canron Corp. v. City of New York, 89 N.Y.2d 147, 153-154, 157-158 (1996)

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