

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D23796
W/kmg

_____AD3d_____

Argued - May 7, 2009

ROBERT A. SPOLZINO, J.P.
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2008-03922

DECISION & ORDER

Spectrum Painting Contractors, Inc., plaintiff, v
Kreiser Borg Florman General Construction Co.,
Inc., et al., defendants, Miriam Osborn Memorial
Home Association, appellant, R&J Construction
Corp., et al., respondents.

(Index No. 3122/02)

LePatner & Associates LLP, New York, N.Y. (Henry H. Korn, Barry B. LePatner,
Jeffrey W. Kleiner, and Jonathan A. Grippo of counsel; Sean McBride on the brief),
for appellant.

Welby, Brady & Greenblatt, LLP, White Plains, N.Y. (Geoffrey S. Pope of counsel),
for respondent Solar Electric Systems, Inc.

In an action, inter alia, to enforce a trust pursuant to Lien Law article 3-A, the
defendant Miriam Osborn Memorial Home Association appeals from an order of the Supreme Court,
Westchester County (Nicolai, J.), entered April 18, 2008, which denied those branches of its motion
which were to disqualify Lester Gulitz, and his law firm, Welby, Brady & Greenblatt, LLP, as counsel
for the defendant Solar Electric Systems Inc., and to decertify that defendant as the class
representative of the class of beneficiaries of a Lien Law article 3-A trust.

ORDERED that the order is affirmed, with costs.

In 2000 the defendant Miriam Osborn Memorial Home Association (hereinafter

July 7, 2009

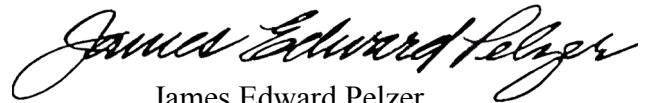
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Osborn), which operates a development for retirees, borrowed the sum of approximately \$57 million from the Dormitory Authority of the State of New York to finance a capital improvement project. Pursuant to article 3-A of the Lien Law, the proceeds of the building loan constituted a trust fund for the purpose of paying certain statutorily-defined costs of improvement (*see* Lien Law § 2[5]; §§ 70, 71). In 2006 Solar Electric Systems, Inc. (hereinafter Solar), was certified as class representative of the class of beneficiaries of the trust fund. Contrary to Osborn's contention, certain conduct on the part of Solar's counsel did not warrant disqualification of Solar's counsel or decertification of Solar as class representative (*see* CPLR 901[a]; 902; *S & S Hotel Ventures Ltd. Partnership v 777 S. H. Corp.*, 69 NY2d 437, 443; *cf. Meachum v Outdoor World Corp.*, 171 Misc 2d 354). Accordingly, the Supreme Court properly denied those branches of Osborn's motion which were to disqualify Solar's counsel and to decertify Solar as class representative.

Osborn's remaining contentions are either not properly before this Court or without merit.

SPOLZINO, J.P., ANGIOLILLO, LEVENTHAL and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court