

**Sample Complaint Trust Fund Diversion Lien Law Article 3-A**

SUPREME COURT OF NEW YORK  
COUNTY OF

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Electrical Supply Company Inc.

Plaintiff

v. VERIFIED COMPLAINT

Index No.

Electric Contractor Inc., Mr. Tom President  
And Mr. John Treasurer

Defendants

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Plaintiff, by their attorneys, Alvy & Tablante, LLP, as and for their Verified Complaint against Defendants, upon information and belief, allege:

AS AND FOR A FIRST CAUSE OF ACTION

1. Plaintiff, Electrical Supply Company Inc. (hereinafter "ESCI") is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York with its principal office at 1 Main Street.
2. Upon information and belief, Defendant, Electric Contractor Inc., (hereinafter "Contractor"), is a domestic corporation organized and existing under and by virtue of the laws of the State of New York with its principal office at 1 Detroit Street.
3. Upon information and belief Defendant, Tom President, is an officer, director or agent of Contractor.
4. Upon information and belief Defendant, John Treasurer, is an officer, director or agent of Contractor.
5. Upon information and belief, Defendant, Contractor, as sub-contractor, entered into a subcontract with Pinnacle Construction, as general contractor or construction manager, wherein for consideration to be paid to Contractor, Contractor agreed to furnish labor and materials at a project known as The House located at Broad Street, New York, New York (hereinafter "The House Project").

6. In furtherance thereof, Defendant, Contractor, entered into a purchase order with Plaintiff, ESCI, whereby for consideration to be paid to ESCI by Contractor, ESCI agreed to furnish to Contractor certain goods and materials in the nature of lighting fixtures, lamps and related materials for The House Project.
7. The agreed price and reasonable value of the goods and materials to be furnished and delivered by ESCI to Contractor is the sum of \$100,000.00.
8. Of the agreed price and reasonable value of the goods and materials furnished by ESCI to Contractor with respect to The House Project, there remains due and owing from Contractor to ESCI the sum of \$75,000.00, no part of which has been paid although duly demanded,
9. The goods and materials furnished by ESCI to Contractor were actually furnished for the construction of The House Project.
10. ESCI has performed all conditions required under said purchase order to be performed by it and is not in default of the purchase order.
11. Contractor has failed and refused to pay ESCI the outstanding amount due.
12. Upon information and belief, Defendant, Contractor has received payments from Pinnacle Construction or from the owner of The House Project on account of its agreement with Pinnacle Construction for The House Project of amounts in excess of the monies owed by Contractor to ESCI.
13. The funds received by Contractor on The House Project constitute trust funds pursuant to Article 3-A of the Lien Law of the State of New York for the benefit of and to be applied to the payment of Plaintiff who has furnished labor or materials in connection with the work at The House Project.
14. The Defendants had knowledge of the existence of ESCI's claim for monies due from Contractor.
15. Upon information and belief, Defendant Contractor, has diverted some of said trust funds for non-trust purposes rather than for the payment of Plaintiff who has furnished labor and materials in connection with the work at The House Project.
16. Upon information and belief, Defendant Tom President has diverted some of said trust funds for non-trust purposes either to himself or others rather than for the payment of Plaintiff who has furnished labor and materials in connection with the work at The House Project.
17. Upon information and belief Defendant, John Treasurer has diverted some of said trust funds for non-trust purposes either to himself or others rather than for the payment of Plaintiff who has furnished labor or materials in connection with the work at The House Project.

18. By reason of the foregoing, Defendants, Tom President and John Treasurer are personally liable to Plaintiff for the monies diverted by them to the extent that Plaintiff has not been paid in full.

19. By reason of the foregoing, ESCI has been damaged by Defendants in the sum of \$75,000.00 plus interest, no part of which has been paid although duly demanded.

20. This action is brought by Plaintiff ESCI, pursuant to Article 3-A of the Lien Law of the State of New York on behalf of itself individually, and on behalf of all other persons or entities who are trust fund claimants by reason of labor or materials furnished to Contractor on The House Project and who have not been paid in full.

21. Plaintiff seeks a determination and allocation of the respective interests of ESCI and such other persons or entities, if any, in and to the trust funds in the hands of Defendants, or as Defendants may be liable for.

22. The Lien Law of the State of New York provides that any trustee of an Article 3-A trust, and any officer, director or agent of such trustee, who applies or consents to the application of trust funds actually received by him for any purposes other than the trust purpose of that trust is guilty of larceny and is punishable as provided in the penal law.

23. Because of the egregious conduct of the Defendants in diverting trust monies in blatant violation of the Lien Law of the State of New York, accompanied by malice or reckless or willful disregard of Plaintiff's rights, Plaintiff is entitled to recover attorneys' fees and exemplary and punitive damages against the Defendants.

24. The actions of the Defendants as alleged above constitute and/or are a part of a deceptive and wrongful scheme and pattern affecting the public welfare and legal rights.

25. One year has not elapsed since the completion of The House Project, the improvement upon which ESCI's claim arose.

26. The Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

(1) that Defendant Contractor be required to account for the New York State Lien Law Article 3-A trust funds which have been and are received with respect to The House Project, for at least the sum of \$75,000.00, plus all additional amounts necessary to pay all of the respective claims of all claimants and Plaintiff;

(2) that the Defendant, Contractor be declared a trustee of such sums;

(3) that Plaintiff, ESCI, and all other claimants similarly situated, be adjudged to have claims against said trust funds for the amount of their respective claims;

(4) that the Defendants be compelled to disclose all transactions between them with reference to The House Project, including a statement of all monies held or paid on account thereof, and to whom paid and the dates of such payments;

(5) that the Defendants be compelled to discover, disclose, account for, and pay over all sums of money held or received by each on account of The House Project, and account for the disposition of any such sums of money disposed of, and also all property and assets of every kind and nature into which the said sums of money or any part thereof are traceable;

(6) that Plaintiff, ESCI, be granted judgment against Defendants Contractor, Tom President and John Treasurer in the amount of \$75,000;

(7) that all other claimants similarly situated each be granted judgment against Defendants, Contractor, Tom President, and John Treasurer, in the amount of their respective claims;

(8) that the Plaintiff recover of the Defendants, jointly and severally, reasonable and adequate attorney's fees and disbursements;

(9) that Plaintiff recover of the Defendants, jointly and severally, exemplary and punitive damages in the amount of \$250,000.00, or such other amount as may be requested at trial or granted by the Court; and

(10) that Plaintiff recover interest on all sums recovered, together with the costs and disbursements of this action, and such other and further relief as to this Court may seem just and proper in the premises.

Dated: Lake Success, New York  
August 10, 2011

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Certification Pursuant to  
22 NYCRR 130-1.1(a)

[add verification]