

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ROBERTO RAMOS, et al.,

Plaintiffs,

MEMORANDUM &
ORDER
07-CV-981 (SMG)

-against-

SIMPLEXGRINNELL LP,

Defendant.

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Gold, S., United States Magistrate Judge:

INTRODUCTION

Plaintiffs, on behalf of themselves and as representatives of a class composed of certain employees of defendant, originally brought this action to recover unpaid prevailing wages for their work on various public works projects. Plaintiffs contended that defendant failed to pay the named plaintiffs and the members of the class all of the prevailing wages due to them for their work on public works projects.¹

This case has had a somewhat complex procedural history. For present purposes, though, it is sufficient to note that some of plaintiffs' claims were settled in 2012, Docket Entry 241, and that plaintiffs' remaining claims were settled in 2015, Order dated August 17, 2015. Plaintiffs have now filed a motion with respect to the second settlement agreement. Plaintiffs' motion seeks an extension of the time provided in the second class action settlement agreement for class members to cash their settlement checks. For the reasons stated below, plaintiffs' motion is denied.

¹ Pursuant to New York law, public works contracts—i.e., contracts with state or local governmental agencies to perform construction, maintenance and repair of public buildings—must provide that all laborers will be paid prevailing wages. N.Y. Lab. Law § 220(3).

FACTS

The settlement agreement at issue provides for a settlement fund of \$9,500,000, with one-third of that amount to be paid to class counsel as attorney's fees and the balance, less some relatively minor amounts for litigation expenses and settlement administration, to be disbursed to class members pursuant to a formula for calculating each member's share. Settlement Agreement, Docket Entry 269-3, ¶¶ 45-46.² The agreement calls for the appointment of a Settlement Administrator, whose responsibilities include calculating the settlement amount due to each class member and mailing checks in that amount to them. Settlement Agreement ¶ 48. Of particular relevance to the pending motion, the agreement further provides that any check not cashed within six months of mailing must be returned to defendant, as follows:

A Participating Class Member must cash his or her Settlement Share check within one hundred eighty (180) calendar days after it is mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Participating Class Member at his or her correct address. If any Participating Class Member's Settlement Share check is not cashed within one hundred eighty (180) calendar days after its last mailing to the Participating Class Member, the Settlement Administrator will return any funds to SimplexGrinnell. In such event, the Participating Class Member nevertheless will remain bound by the Settlement.

Settlement Agreement ¶ 47.

Notice of the settlement at issue was sent by the Settlement Administrator to more than 700 class members. Menken Decl. dated July 7, 2015, Docket Entry 255-4, ¶¶ 17-18. On March 21, 2016, the Settlement Administrator advised counsel for the parties that the time provided by the agreement for cashing checks had expired, and that fifty-nine class members to whom checks totaling \$176,152.04 were mailed did not cash them. Pl. Mem., Docket Entry 269-5, at 2. Some

² The first portion of the case was settled for a total of \$5,525,000, of which \$1,841,667 was paid as attorney's fees. Menken Decl. dated July 7, 2015, Docket Entry 255-4, at ¶ 24. The total amount in attorney's fees paid in connection with the two settlement agreements thus totals slightly more than five million dollars. Menken Decl. ¶ 39.

of the uncashed checks were for large dollar amounts: ten of the checks exceeded \$1,000, and four ranged from approximately \$19,000 to \$51,000. Pl. Mem. at 2 and Ex. C, Docket Entry 269-4. In the pending motion, plaintiffs' counsel seeks an extension of the deadline provided in the settlement agreement for cashing checks so that an effort to locate the fifty-nine class members who did not cash their checks may be made and, if they are found, they may receive their shares of the settlement fund. Defendant opposes the motion on the grounds that paragraph forty-seven of the settlement agreement provides that, if any checks are not cashed by the deadline, the funds will be returned to SimplexGrinnell.

DISCUSSION

Settlement agreements are contracts and must be construed according to general principles of contract law. *Torres v. Walker*, 356 F.3d 238, 245 (2d Cir. 2004). The settlement agreement in this case explicitly and unambiguously provides that checks not cashed by a particular date are to be returned to defendant SimplexGrinnell. Plaintiffs' motion thus seeks relief that, if granted, would deprive defendant of a benefit for which it bargained and to which it is plainly entitled pursuant to the terms of the contract.

The circumstances of this case are analogous to those at issue in *Dahingo v. Royal Caribbean Cruises, Ltd.*, 312 F. Supp. 2d 440 (S.D.N.Y. 2004). As in this case, the defendant in *Dahingo* created a settlement fund that the parties agreed would satisfy the claims of a plaintiff class. The settlement agreement in *Dahingo* afforded plaintiffs a specified amount of time to submit a claim against the fund, and barred any class member who failed to submit a timely claim from receiving any portion of the settlement fund. *Id.* at 443. Finally, like here, the agreement provided that any portion of the settlement fund not claimed within the time provided would revert to the defendants. *Id.* A substantial number of claims in *Dahingo* were filed late,

and counsel for the class moved for an order permitting claimants who filed untimely claims to participate in the settlement. The court in *Dahingo* recognized that the general principle that settlement agreements are to be construed according to general contract law principles applied to class action settlements, and that courts therefore generally do not have the authority to modify their terms to reach an equitable result. *Id.* at 445-46. Accordingly, the court went on to deny the motion, reasoning that “courts will not permit late-filed claims where the consequence is to increase the obligation of the defendant.” *Id.* The consequence of affording plaintiffs in this case additional time to cash their checks would be to increase the obligation of defendant SimplexGrinnell. The reasoning in *Dahingo* thus supports denial of plaintiffs’ motion.

Plaintiffs attempt to distinguish *Dahingo* on the grounds that it involved untimely claims and this case involves checks that were not cashed by a specified time. Reply Mem., Docket Entry 271, at 3-4. The distinction emphasized by plaintiffs is of no moment. The critical point is that, like the court in *Dahingo*, this Court lacks any authority to reform the settlement agreement—a contract—to defendant’s detriment, even if doing so might be fair and reasonable. *See also Flynn v. New York Dolls Gentlemen’s Club*, 2015 WL 2359830, at *2 (S.D.N.Y. Apr. 28, 2015) (refusing to allow late claims because to do so would impose obligations on defendants in excess of those bargained for and set forth in the terms of the settlement agreement).

Although plaintiffs cite cases in which courts modified the terms of settlement agreements, they are readily distinguishable. Indeed, in *Beecher v. Able*, 575 F.2d 1010 (2d Cir. 1978), the very first case cited in plaintiffs’ memorandum of law, the court held that a class action settlement agreement could be modified with respect to the allocation of settlement proceeds among class members “[s]ince reversion was foreclosed by the express terms of the

settlement.” *Id.* at 1016.³ Similarly, in *Zients v. LaMorte*, 459 F.2d 628 (2d Cir. 1972), although the Second Circuit held that a court has equitable power to permit late claims, the adverse impact of allowing the late claims in that case fell upon plaintiffs who filed timely claims, not defendant, and even they would sustain “only a miniscule reduction in recovery.” *Id.* at 630.

Plaintiff does cite one case in which certain late claims were allowed even though the settlement agreement provided that any portion of a settlement fund not distributed to class members would revert to the defendant. *See In re Crazy Eddie Securities Litig.*, 906 F. Supp. 840 (E.D.N.Y. 1995). In that case, though, the deadline for filing claims was imposed by the court, and was not bargained for by the parties or set forth in an agreement reached by them after negotiation. *Id.* at 844. The application for consideration of late claims was therefore analyzed as a request for an enlargement of time to comply with a court-imposed deadline, and not pursuant to general principles of contract law. *Id.*; *see also Dahingo*, 312 F. Supp. 2d at 446 (distinguishing *Crazy Eddie* on the ground that it involved a deadline established by the court and not one negotiated by the parties).

Finally, plaintiffs’ reliance on *In re Cendant Corp. PRIDES Litig.*, 235 F.3d 176 (3d Cir. 2000) is misplaced. An earlier decision in the same case makes plain that the Third Circuit concluded that the stipulation of settlement expressly “anticipate[d] the need for some claimants to cure their proofs of claims, and the need for an extension of time in which to do so.” 233 F.3d 188, 194 (3d Cir. 2000). Accordingly, the decision to permit late claims in *Cendant* did not alter the bargain reached by the parties to defendant’s detriment, and the decision therefore has no bearing here.

³ As noted above, class counsel has been awarded more than five million dollars in attorney’s fees. The amount of the uncashed checks at issue is \$176,152.04. If plaintiffs were to file a motion seeking reallocation of this amount of attorney’s fees to pay class members who failed to cash their checks on time, it seems the relief sought would be authorized by the case law cited in the text.

CONCLUSION

For the reasons stated above, plaintiffs' motion to extend the time to locate class members who have not cashed their settlement checks is denied.

SO ORDERED.

/s/
STEVEN M. GOLD
United States Magistrate Judge

Brooklyn, New York
June 17, 2016

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