

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

PEOPLE OF THE STATE OF NEW YORK by
LETITIA JAMES, Attorney General of the State of New
York,

Plaintiff,

-against-

Build with Prospect, Inc., Jeremy Shannon, Carla Shannon,
James McDaniel,

Defendants.

SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with the summons, to serve a notice of appearance, on the Plaintiff’s attorney within twenty (20) days after the service of this summons, exclusive of the day of service. If this summons is not personally served upon you, or if this summons is served upon you outside of the State of New York, then your answer or notice of appearance must be served within thirty (30) days. In case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Venue is proper because Plaintiff has a principal office at 28 Liberty Street, New York, New York 10005 and because Defendants reside in Kings County.

Dated: July 28, 2021

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: /s/ Jessica Agarwal

JESSICA AGARWAL
ANIELKA SANCHEZ GONDINEZ
Assistant Attorneys General

Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-8701
Jessica.Agarwal@ag.ny.gov

Attorneys for the State of New York

To:

Build with Prospect, Inc.
540 President St., FL 3
Brooklyn, NY 11215

Jeremy Shannon
Carla Shannon
72 Hartwood Club Rd.
Sparrow Bush, NY 12780

James McDaniel
53 Hartwood Club Rd.
Sparrow Bush, NY 12780

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

PEOPLE OF THE STATE OF NEW YORK by
LETITIA JAMES, Attorney General of the State of New
York,

Plaintiff,

-against-

BUILD WITH PROSPECT, INC., JEREMY
SHANNON, CARLA SHANNON, JAMES
MCDANIEL,

Defendants.

COMPLAINT

Index No.

Plaintiff, the People of the State of New York, by Letitia James, Attorney General of the State of New York (“Attorney General”) respectfully alleges:

INTRODUCTION

1. Defendant Build with Prospect, Inc. (“BWP”) and Defendants Jeremy Shannon, Carla Shannon, and James McDaniel, owners and managers of BWP, (collectively, “Defendants”), deprived the company’s employees of hard-earned wages by requiring them to sign shareholder agreements and pay for their shares of the company. The Attorney General brings this action, pursuant to N.Y. Executive Law § 63(12), to remedy Defendants’ persistent and repeated violations of New York Labor Law (the “Labor Law”) §§ 193 and § 198.

2. From 2013 to 2016, BWP operated ostensibly as a “worker collective” and forced employees to sign shareholder agreements, as a condition of employment with the company, in order to qualify as a Minority Business Enterprise. As shareholders, employees were required to pay the company for their shares through deductions or direct payments to the company from their wages while receiving no benefit of ownership in return.

3. The Attorney General brings this action to recover the employees' stolen wages and seeks liquidated damages, penalties, attorneys' fees, and prejudgment interest.

JURISDICTION AND VENUE

4. This Court has jurisdiction over Defendants pursuant to N.Y. C.P.L.R. § 301.

5. Venue is proper in Kings County because Defendants are subject to personal jurisdiction in Kings County pursuant to N.Y. C.P.L.R. § 503, and the events giving rise to the claims took place in Kings County, New York.

PARTIES

6. Plaintiff is the People of the State of New York by the Attorney General of the State of New York and is empowered to seek injunctive relief, restitution, and damages for repeated and persistent illegality in the transaction of business in the State of New York.

7. The Attorney General's principal place of business is 28 Liberty Street, New York, New York, 10005.

8. Defendant BWP is registered as a domestic business corporation with the New York State Department of State with an address of 540 President Street, 3rd Floor, Brooklyn, New York 11215.

9. Defendant Jeremy Shannon is the CEO of Build with Prospect, Inc.

10. Defendant Carla Shannon is the CFO of Build with Prospect, Inc.

11. Defendant James McDaniel is the COO of Build with Prospect, Inc.

FACTUAL ALLEGATIONS

A. The Attorney General's Investigation

12. The Attorney General initiated an investigation into Defendants by serving a Subpoena Duces Tecum and Ad Testificandum on Build with Prospect, Jeremy Shannon, and James McDaniel on October 20, 2016.

13. Pursuant to the subpoena, Defendants produced some documents, including board meeting minutes, shareholder agreements, bank statements, and office memoranda.

B. Defendants Forced Employees to Become Shareholders of BWP.

14. BWP is a design and construction company based in Brooklyn, New York, formed on October 24, 2013.

15. On information and belief, the majority of employees at BWP were women and/or people of color.

16. Employees signed two shareholder agreements with BWP—one effective in December 2013 (“2013 Agreement”) and an amended shareholder agreement effective in December 2015 (“2015 Agreement”).

17. Between December 2013 and March 2016, at least 15 employees became shareholders of BWP.

18. The 2013 Agreement states that “each full time employee of the Company...shall be required to become, and remain, a shareholder of the Company.”

19. The 2015 Agreement “amends, restates in whole, and replaces the prior Shareholders’ Agreement.”

20. The 2015 Agreement states that “[t]he Company is intended to be a workers cooperative so that each Shareholder must be [a] full time employee of the Company.”

21. Although employees were forced to become shareholders of BWP, employees had very little control over the company as shareholders and received no benefits of ownership.

22. Neither the 2013 nor the 2015 Agreement affirmatively state any benefit that an employee would obtain from becoming a Shareholder.

23. Employees attended weekly Shareholder meetings but had little to no control over business decisions.

24. Schedule A to the 2013 Agreement states that “[e]mployees who have less than three years of full time employment... shall purchase Class B (Non-Voting) Stock.” Upon information and belief, the majority of employees purchased Class B Stock, and, therefore, had virtually no power as a Shareholder at BWP.

25. On information and belief, Defendants required employees to become shareholders in order to qualify BWP as a Minority and Women-owned Business Enterprise (M/WBE).

26. The New York City Minority and Women-owned Business Enterprise Program expands opportunities for minority and women entrepreneurs to access government contracts and grow their business. Among the eligibility criteria is a requirement that at least 51% of the business is owned, operated and controlled by a U.S. Citizen(s) or U.S. permanent resident(s) who are women and/or members of designated minority groups including Black, Hispanic, Asian-Pacific, and Native American.¹

27. Defendants applied for BWP to become a M/WBE on two occasions.

28. Defendants required employees to attend a governmental agency meeting in order to obtain a contract under the M/WBE Certification Program.

¹ <https://www1.nyc.gov/nycbusiness/description/minority-and-womenowned-business-enterprise-certification-program-mwbe>

29. Only minority and women employees, and not Defendants, attended the meeting where they were asked questions pertaining to their roles at BWP to ascertain whether they had any actual ownership over BWP, such as who signed the checks, who hired and fired employees, and who calculated quotes and biddings.

30. Upon information and belief, because the minority and women employees demonstrated at the meeting that they did not exercise actual ownership over BWP, Defendants withdrew their applications and did not receive a contract under the M/WBE Certification Program.

C. Defendants Forced Employees to Pay to Become Shareholders.

31. Schedule A to the 2013 Agreement required each employee to purchase one share of the capital stock “as a condition of continued employment” after a probationary period of 12 months.

32. The purchase price of each share was \$12,000 and “payable \$100 upon the closing of the purchase, and the balance in 119 equal installments of \$100 each payable monthly thereafter (on the day of each calendar month that the first monthly paycheck is available).”

33. Defendants obtained money owed from the employees under the shareholder agreements through deductions from employee paychecks, bank transfers, checks, and cash.

34. In a letter dated January 20, 2015, Defendant Carla Shannon directed employees to deposit \$100 per month in the company’s Chase savings account and suggested that the deposit could be accomplished via “online bill pay,” “by check,” or “by cash and physically tak[ing] it to any Chase branch to deposit it.”

35. BWP bank statements from November 2013 to November 2016 show multiple deposits of \$100 each in the business checking account and business savings account.

FIRST CAUSE OF ACTION PURSUANT TO EXECUTIVE LAW § 63(12)
(Unlawful Deductions Violations under New York Labor Law § 193)

36. Plaintiff repeats and realleges paragraphs 1 through 35 as if fully set forth herein.

37. New York Executive Law § 63(12) authorizes the New York Attorney General to bring an action for repeated or persistent illegal conduct to the supreme court of New York for injunctive relief, restitution, and damages.

38. The Labor Law prohibits employers from “mak[ing] any deduction from the wages of an employee” unless the deduction (a) was made in accordance with a law, rule, or regulation; or (b) was authorized in writing by the employee and is for the benefit of the employee, if the employee is notified of the terms, conditions, and benefits of the deduction, or the deduction is made pursuant to a collective bargaining agreement, and is one of fourteen authorized payments. N.Y. Lab. Law § 193(1)(b).² Employers may not side-step the prohibition against unlawful deductions by requiring their employees “to make any payment by separate transaction unless such charge or payment is permitted as a deduction from wages.” *Id.* at § 193(3)(a).

39. Defendants illegally reduced employee wages by obtaining payment from employees for their share as shareholders by deducting amounts from their paychecks.

² The authorized payments are: (i) insurance premiums and prepaid legal plans; (ii) pension or health and welfare benefits; (iii) contributions to a bona fide charitable organization; (iv) purchases made at events sponsored by a bona fide charitable organization affiliated with the employer where at least twenty percent of the profits from such event are being contributed to a bona fide charitable organization; (v) United States bonds; (vi) dues or assessments to a labor organization; (vii) discounted parking or discounted passes, tokens, fare cards, vouchers, or other items that entitle the employee to use mass transit; (viii) fitness center, health club, and/or gym membership dues; (ix) cafeteria and vending machine purchases made at the employer's place of business and purchases made at gift shops operated by the employer, where the employer is a hospital, college, or university; (x) pharmacy purchases made at the employer's place of business; (xi) tuition, room, board, and fees for pre-school, nursery, primary, secondary, and/or post-secondary educational institutions; (xii) day care, before-school and after-school care expenses; (xiii) payments for housing provided at no more than market rates by non-profit hospitals or affiliates thereof; and (xiv) similar payments for the benefit of the employee. N.Y. Lab. Law § 193(1)(b).

40. Defendants further illegally reduced employee wages by obtaining payment from employees for their share as shareholders by bank transfer, cash, and check.

41. Defendants' violations of Labor Law § 193 constitute repeated and persistent illegal acts in the carrying on, conducting, or transaction of business as defined by New York Executive Law § 63(12).

SECOND CAUSE OF ACTION PURSUANT TO EXECUTIVE LAW § 63(12)
(Unlawful Kickback of Wages Violations under Labor Law § 198(b))

42. Plaintiff repeats and realleges paragraphs 1 through 41 as if fully set forth herein.

43. New York Executive Law § 63(12) authorizes the New York Attorney General to bring an action for repeated or persistent illegal conduct to the supreme court of New York for injunctive relief, restitution, and damages.

44. The Labor Law prohibits the kickback of wages. N.Y. Lab. Law § 198-b. Specifically, the Labor Law makes it unlawful for any person to request, demand, or receive, either before or after an employee is engaged, a return, donation or contribution of any part or all of said employee's wages, salary, supplements, or other thing of value, upon the statement, representation, or understanding that failure to comply with such request or demand will prevent such employee from procuring or retaining employment. N.Y. Lab. Law at § 198-b(2).

45. Defendants unlawfully demanded that employees contribute funds and received payments from employees from part or all of the employees' wages and salary for the shareholder program for employees to retain employment.

46. Defendants' violations of Labor Law § 198(b) constitute repeated and persistent illegal acts in the carrying on, conducting, or transaction of business as defined by New York Executive Law § 63(12).

WHEREFORE, Plaintiff, the Attorney General of the State of New York, on behalf of the People of the State of New York, requests that this Court issue an Order for the following relief:

- (a) Finding that Defendants repeatedly and persistently violated Labor Law § 193;
- (b) Finding that Defendants repeatedly and persistently violated Labor Law § 198(b);
- (c) Enjoining Defendants from further violations of Labor Law § 193;
- (d) Enjoining Defendants from further violations of Labor Law § 198(b);
- (e) Awarding backpay, including lost compensation, for Defendants' illegal deductions from paychecks and illegal kickbacks obtained from the employees;
- (f) Awarding liquidated damages equal to 100 percent of the total amount of wages found to be due;
- (g) Awarding interest;
- (h) Awarding Plaintiff its reasonable attorneys' fees, costs, and expenses;
- (i) Granting such other and further relief as the Court may deem just and proper.

Dated: July 28, 2021

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: /s/ Jessica Agarwal

JESSICA AGARWAL
ANIELKA SANCHEZ GONDINEZ
Assistant Attorneys General

Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-8701
Jessica.Agarwal@ag.ny.gov

Attorneys for the State of New York