To be Argued by:
JESSICA F. PIZZUTELLI
(Time Requested: 15 Minutes)

Case No. CTQ-2025-00007

Court of Appeals

of the

State of New York

KEVIN T. MADDISON and DAVID WALTON, individually and on behalf of all other persons similarly situated,

Appellants,

– against –

COMFORT SYSTEMS USA (SYRACUSE), INC.,
D/B/A ABJ FIRE PROTECTION CO., INC.,

Respondent.

BRIEF FOR RESPONDENT

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DISCLOSURE STATEMENT

Pursuant to Section 500.1(f) of the Rules of Practice of the New York Court of Appeals, Respondent Comfort Systems USA (Syracuse), Inc., d/b/a ABJ Fire Protection Co., Inc., hereby states, by and through its undersigned counsel of record, that it is a wholly-owned subsidiary of Comfort Systems USA, Inc., a publicly traded company.

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CERTIFIED QUESTIONS PRESENTED

The United States Court of Appeals for the Second Circuit certified two questions to this Court:

1. Is the promise to pay prevailing wages implicit in every public works contract so that individuals employed on public works projects may sue their employers for breach of contract to enforce the prevailing wage requirement under NYLL § 220 even if the employer's written contract does not include the statutorily required promise to pay prevailing wages?

2. Are agreements to shorten the statute of limitations in public works contracts to one year enforceable against workers bringing third-party beneficiary breach of contract claims to enforce the prevailing wage law?

Appendix of Appellants ("A")-45. The first question should be answered in the negative, and the second in the affirmative.

ARGUMENT

POINT I: THE PROMISE TO PAY PREVAILING WAGES IS NOT IMPLICIT IN EVERY PUBLIC WORKS CONTRACT; THE COURT SHOULD NOT CREATE A HYBRID STATUTORY/THIRD-PARTY BENFICIARY CLAIM WHEN NEITHER THE LEGISLATURE NOR THE PARTIES INTENDED TO PROVIDE FOR SUCH A CLAIM.

Appellants assert a common law breach of contract claim as a third-party beneficiary. As such, they are constrained by settled New York law governing the common law breach of contract claim they elected to pursue. Third-party beneficiary law requires express contractual language showing the intent of the contracting parties to benefit a third-party and permit enforcement. Here, the contracts at-issue did not

provide for the payment of prevailing wages to Appellants. (A-10-11). Consequently, Appellants cannot pursue a third-party beneficiary breach of contract claim for payment of prevailing wages, when the written contracts they sue upon reflect no such promise.

This Court should decline to read into contracts terms that do not exist and re-write settled third-party beneficiary law to create a Court-made exception for parties to privately bring a backdoor New York Labor Law ("NYLL") § 220 claim in Court. Doing so would collapse the Legislature's statutory design which explicitly provides for an administrative remedy for aggrieved workers, and just as clearly does not provide a private right of action.

Requiring workers to meet the elements of a third-party beneficiary breach of contract claim does not abridge a workers' ability to "vindicate their statutory" rights under NYLL § 220. The Legislature, not the contracting parties or the courts, determined that workers who wish to "vindicate their statutory" rights directly under NYLL § 220 must pursue the prescribed administrative remedy under that statute. Permitting an end-run around that unambiguous statutory scheme undermines the intent of both the Legislature and the contracting parties, sowing unnecessary confusion. The Second Circuit's first certified question should be answered in the negative.

A. Intent To Benefit Third-Parties Is Required To Bring A Third-Party Beneficiary Breach of Contract Claim.

Under New York law, a "third party may sue as a beneficiary on a contract made

for [its] benefit. However, an intent to benefit the third party must be shown, and, absent such intent, the third party is merely an incidental beneficiary with no right to enforce the particular contracts." *Dormitory Auth. of the State of N.Y. v. Samson Constr. Co.,* 30 NY3d 704, 710 (2018) (internal citations omitted); *see also Burns Jackson Miller Summit & Spitzer v. Lindner*, 59 NY2d 314, 336 (1983) (party may recover as a third-party beneficiary "only by establishing (1) the existence of a valid and binding contract between other parties, (2) that the contract was intended for his benefit, and (3) that the benefit to him is sufficiently immediate, rather than incidental, to indicate the assumption by the contracting parties of a duty to compensate him if the benefit is lost").

As this Court recognized, "[w]ith respect to construction contracts, we have generally required *express contractual language* stating that the contracting parties intended to benefit a third party by permitting that third party 'to enforce [a promisee's] contract with another.'" *Dormitory Auth.,* 30 NY3d at 710 (emphasis added), citing *Port Chester Elec. Constr. Corp. v Atlas*, 40 NY2d 652, 656 (1976); *see also Baltia Air Lines, Inc. v. CIBC Oppenheimer Corp.*, 273 AD2d 55, 56 (1st Dept 2000) ("plaintiff has no standing to sue for such alleged breach as a third-party beneficiary of the… agreement, the express terms of which negate any implication of third-party beneficiary rights"), *appeal denied* 95 NY2d 767 (2000); *Subaru Distribs. Corp. v. Subaru of Am., Inc.*, 425 F3d 119, 124 (2d Cir 2005) ("Under New York law, in order to recover as a third-party beneficiary of contract, a claimant must establish that the parties to the contract intended to confer a

benefit on the third party… Under New York law, dismissal of a third-party-beneficiary claim is appropriate where the contract rules out any intent to benefit the claimant"); *Premium Mtge. Corp. v. Equifax, Inc.*, 583 F3d 103, 108 (2d Cir 2009) ("A non-party to a contract governed by New York law lacks standing to enforce the agreement in the absence of terms that 'clearly evidence[] an intent to permit enforcement by the third party' in question") (internal citations omitted).

This Court has, for decades and repeatedly, denied third-party beneficiary status where the contract language did not contain language manifesting an intent to benefit the third-party. *See Dormitory Auth.,* 30 NY3d at 710; *Mendel v. Henry Phipps Plaza West, Inc.,* 6 NY3d 783, 786 (2006) (finding plaintiffs could not sue as third-party beneficiaries where the contract explicitly negates any intent to permit its enforcement by the third parties); *Port Chester Elec. Constr. Co.,* 40 NY2d at 655-656 (in case involving construction contract, where subcontractor sought to recover as third-party beneficiary for work performed, finding that subcontractor was not a third-party beneficiary because Court could not "conclude from the record before us that the Contractor and the Owner intended that their contract run to the benefit of the subcontractor. Thus, it cannot be said that the subcontractor was a third-party beneficiary of that contract…"); *Mandarin Trading Ltd. v. Wildenstein,* 16 NY3d 173, 182 (2011) (affirming dismissal of breach of contract claim where party failed to plead terms of valid and binding contract that were intended for its immediate benefit).

Accordingly, applying these black-letter principles here, if an employer's written

contract does not promise to pay workers prevailing wages, workers cannot sue as a third-party beneficiary on such contracts for such wages. Allowing them to do so would essentially create a contractual term, where none exists, and private right of action under NYLL § 220, when (as set forth below) the Legislature chose not to provide for such a claim and instead opted to require an administrative process as a prerequisite to any private right of action.

B. There is No Private Right of Action Under NYLL § 220.

In New York, the Legislature assigned the initial determination of prevailing wage claims to the fiscal officer, with review via an Article 78 proceeding. Specifically, New York law governing the payment of prevailing wages is set forth in NYLL § 220. *See* NYLL § 220, *generally*. In NYLL § 220, the Legislature provided detailed administrative procedures allowing for a fiscal officer of the state to investigate and determine whether prevailing wages should be paid to workers under the statute. NYLL § 220(7) provides that the "fiscal officer… *shall* on a verified complaint in writing of any person" or "on his own initiative" cause a "compliance investigation to be made to determine whether the contractor or subcontractor has paid the prevailing rate of wages…". *Id.* (emphasis added). The fiscal officer is "deemed to be acting in a judicial capacity." *Id.* The fiscal officer "shall make either an order, determination or any other disposition" regarding the payment of prevailing wages. *Id.* Only after entry of the order, may "any party aggrieved thereby… commence a proceeding [in court] for the review thereof pursuant to article seventy-eight…". *Id.* § 8.

"It is settled that no private right of action for the underpayment of wages exists under Labor Law § 220 until an administrative determination in the employee's favor has been made and has gone unreviewed or has been affirmed." *P&T Iron Works v. Talisman Contr. Co.,* 18 AD3d 527, 528 (2d Dept 2005) (internal citation omitted). As the *P&T* Court observed, regarding alleged violations of NYLL § 220, "*as the statute makes clear, determination of a prevailing wage claim is, in the first instance, the exclusive province of the fiscal officer and must be initially subjected to an administrative proceeding*." *Id.* at 529 (emphasis added); *accord Winsch v. Esposito Bldg. Specialty, Inc.,* 48 AD3d 558, 558 (2nd Dept 2008) ("[N]o private right of action for the underpayment of wages exists under Labor Law 220" until administrative determination made) (internal citation omitted); *accord Yerry v. Goodswell,* 4 AD2d 395, 403 (3rd Dept 1957) ("We are not here concerned with the question of whether the public remedy provided by the Legislature is an adequate or effective one; it is enough for us to observe, upon analysis of the statute, that that is the remedy which the Legislature decided should be made available to the public") *affd* 4 NY2d 999 (1958).

As this Court observed, the Legislature intended this powerful administrative mechanism to be the proper avenue to enforce the public policy of the state relating to the payment of prevailing wages:

> Labor Law § 220, in content, structure and purpose confirms that a proceeding such as this, brought by the Commissioner of Labor to enforce the statutory and constitutional mandate, has as its overriding goal the vindication of a public interest *rather than just to provide a forum in a particular case for the adjudication of a claimed personal statutory right*… The

> statutory procedures, powers and duties of the Commissioner and available remedies and sanctions under section 220 and the other provisions of article 8 of the Labor Law all have the earmark of a *powerful administrative mechanism* for the enforcement of a strong public policy…

Cayuga-Onodaga Counties Bd. of Coop. Educ. Servs. v. Sweeney, 89 NY2d 395, 401-402 (1996) (emphasis added) (internal citations omitted); *accord Yerry,* 4 AD2d at 398 (finding "[t]he complaint procedure [in § 220(7), (8)]… was adopted solely for the purpose of providing the employees on the job with an effective administrative remedy" and designed so that "an administrative determination of the prevailing rate of wages could be obtained by the employee in advance of bringing an action for damages.").

As the above demonstrates, the Legislature has clearly and directly spoken that the proper enforcement mechanism for NYLL § 220's prevailing wage requirement is through the detailed and robust administrative procedures it developed; and there is no statutory private right of action conferred on an individual seeking to vindicate a claimed personal *statutory* right.

C. Third-Party Beneficiary Breach of Contract Claims in the Prevailing Wage Context Require Express Contractual Language.

1. New York Court of Appeals Precedent Confirms Third-Party Beneficiary Principles Must be Honored in Private Suits.

This Court has considered the question of whether workers may bring a common law breach of contract claim for prevailing wages as an intended third-party beneficiary of a public works contract. *See Fata v. S.A. Healy Co.*, 289 NY 401, 406-407 (1943); *Wright v. Herb Wright Stucco,* 50 NY2d 837 (1980); *Ramos v. SimplexGrinnell LP,* 24 NY3d

143 (2014). In each case, this Court honored the common law requirement that in order for a party to be held liable to a third-party on a contract claim, there must be *express contractual language* stating that the contracting parties intended to benefit the third-party.

In *Fata,* the seminal case that recognized a third-party beneficiary breach of contract claim in the prevailing wage context, this Court acknowledged "that if the obligation of the defendant to pay [prevailing] wages… *existed only by fiat of the Legislature* [as is the case here], the *remedy provided by the Legislature for violation of the obligation it has created would be exclusive*." 289 NY at 405 (emphasis added). If, however, a worker can establish that a "*contract* entered into by the defendant" provides for the payment of prevailing wages, then (and only then) the plaintiff may maintain a "common-law action… for breach of the *agreement* contained in the contract between the employer and [public entity]." *Id.* at 405 (emphasis original). This holding would be meaningless – and, specifically, the Court's distinction between rights created only by "fiat of the Legislature" versus rights created by *contract* (*id.* at 404) – if the promise to pay prevailing wages was implicit in every public works contract.

In *Fata,* because the contract expressly required the contractor to pay certain fixed wages, the worker could pursue a third-party beneficiary breach of contract claim to enforce the contractual promise. *Id.* at 405-407. *Fata* recognized that where a contract contains a wage undertaking, workers may sue on the agreement. But, in the absence of an express wage term, the administrative path provided by the Legislature "would be [the workers'] exclusive" remedy. *Id.* at 404-405.

Similarly, in *Wright*, and unlike here, a contractor signed a contract which expressly required it to pay prevailing wages and to impose the same obligations on its subcontractors. *See Wright v. Wright Stucco,* 72 AD2d 959, 959 (4th Dept 1979). The workers sued the subcontractor alleging they were paid less than the prevailing wages and sought to enforce their rights as third-party beneficiaries to the *express* contract. *Id.* This Court adopted the Appellate Division's dissenting opinion, which considered whether the prevailing wage statute was the *sole means* of enforcing a workers' claim to prevailing wages. *See Wright,* 50 NY2d at 839. The Appellate Division dissent stated the administrative option "simplified and implemented the worker's remedy by removing some of the burdens that a normal law suit would entail." *Wright,* 72 AD2d at 960. The dissent then simply went on to conclude that the administrative enforcement mechanism for prevailing wage claims does not abrogate common-law third-party beneficiary claims, to the extent such contractual, common-law claims exist, including "difficult issues of proof" – no more and no less. *Id.*

As the Second Circuit observed, together, *Fata* and *Wright* support that where a contract expressly promises to pay prevailing wages, a third-party worker may enforce the prevailing wage requirement through a third-party beneficiary breach of contract claim under established New York common law principles. (A-31).

Finally, in *Ramos,* this Court (again) considered the scenario where a party contractually agreed to pay prevailing wages, and found that the parties' "agreement to comply with a statute" supported the contract claim. *Ramos,* 24 NY3d at 148. No similar

contractual language is at-issue here.

Appellants also cite to this Court's decision in *Cox v. NAP Constr. Co., Inc.*, but *Cox* simply quoted *Fata* and reiterated this Court's above holdings that "when a contractor has promised to pay its workers the prevailing wages… the workers may sue under state law to enforce the promise." 10 NY3d 592, 599 (N.Y. 2008). In so holding, the *Cox* Court observed that a breach of contract claim involving payment of prevailing wages must be treated "like a breach of any other stipulation of the contract" – receiving no special treatment. *Id.* at 606. *Cox* does not address the question presented here, where it is undisputed the contract contains no similar provision for the benefit of the Appellants.

Each of the above decisions honors established New York law regarding third-party beneficiary breach of contract claims, and the common law requirement that in order to sustain such a claim, there must be contractual language showing the contracting parties intended to benefit the third-party. None of the above cases support that an implied term to pay prevailing wages is implicit in every contract such that a worker can, in every instance, bring a third-party beneficiary breach of contract claim despite the fact that the contract includes no such promise. In fact, to hold that the promise to pay prevailing wages is an implied term in every contract, such that workers in all instances have a private right of action to a backdoor NYLL § 220 claim, would cause the entire Legislative administrative structure to collapse and render meaningless the Legislature's clear intent that there is no private cause of action for a NYLL § 220

claim until a worker has exhausted their administrative remedies. Appellants offer no justification to circumvent the plain language of New York's 100-year-old statutory scheme and by-pass an equally long and untortured history of New York common law governing third-party beneficiary claims.

2. New York Appellate Cases are Non-Dispositive to the Extent They Suggest an Implied Contractual Term.

New York Appellate courts have also considered the intersection of third-party beneficiary breach of contract claims and NYLL § 220. *See Maldonado v. Olympia Mech. Piping & Heating Corp.,* 8 AD3d 348, 350 (2d Dept 2004). In *Maldonado,* the Second Department held: "The workers protected by Labor Law § 220 are third-party beneficiaries of the contract between their employer and the municipality, and they possess a cause of action against their employer to recover damages for breach of contract *when the contract between the employer and the municipality expressly provides for the wages to be paid to such workers.*" *Id.* at 350 (emphasis added).

Similarly, in *Winsch,* the Second Department held that the Supreme Court properly awarded summary judgment to the defendant dismissing the worker's breach of contract claim, on the grounds that the "complaint failed to identify the provisions of the contracts which allegedly were breached…". 48 AD3d at 559. Of course, if prevailing wage language were implied in every contract, there would be no need to identify "the provisions of the contracts" that were allegedly breached.

As with the above New York Court of Appeals cases, the *Maldonado* and *Winsch*

decisions similarly honor the core tenant of third-party beneficiary breach of contract claims by observing that such claims must be supported by the intent of the contracting parties, and terms of a specific contract.

Appellants rely upon, and the Second Circuit also considered, "several decisions of the Appellate Division" that the Second Circuit stated did not "point in the same direction." (A-34, *citing Singh v. Zoria Housing, LLC,* 163 AD3d 1025 (2d Dept 2018); *Wroble v. Shaw Envtl. & Infrastructure Engg. of New York, P.C.,* 166 AD3d 520, 521 (1st Dept 2018)). To the extent these decisions depart from established third-party beneficiary breach of contract principles, Respondent respectfully submits that these cases were wrongly decided.

For example, in *Singh,* the Second Department held that NYLL § 220 created a contractual obligation in the contract, and that the worker was not required to exhaust administrative remedies prior to asserting a breach of contract claim, notwithstanding provisions in the bid document pertaining to administrative processes. 163 AD3d at 1025-1026. As the Second Circuit correctly observed, the "court did not further explain its reasoning, and the two cases it cited in support of its conclusion offer few additional clues." (A-37).[1] As the Second Circuit also correctly concluded, "*that's not how third-party*

[1] The *Singh* Court cited *Stennett v. Moveway Transfer & Stor., Inc.*, 97 AD3d 655 (2d Dept 2012) and *Cox v. NAP Constr. Co., Inc.*, 10 NY3d 592 (2008). Taking them in reverse order, as noted above, *Cox* does not support the Court's holding, and instead acknowledges that common law principles must be honored. *Stennett* simply cites to *Cox* and *Maldonado* which, as discussed above, holds the opposite. In *Stennett,* the Court also considered contracts that, unlike here, "included prevailing wage provisions." 97 AD3d at 657.

beneficiary claims ordinarily work." (A-37) (emphasis added).

Similarly, in *Wroble,* the at-issue contract (again) provided for the payment of prevailing wages. 166 AD3d at 520-521. The provision also expressly prohibited third-parties from bringing any "new right of action" under the contract. *Id.* at 521. When the employees ignored this language and brought a claim as third-parties under the contract, the contractor moved to dismiss arguing that the contract expressly prohibited them from doing so. The First Department held that "the contract clause prohibiting third-party actions for violation of prevailing wage payments would be void as against public policy." *Id.* As in *Singh,* the First Department did not cite to any "public policy" mandating a private right of action over the Legislature-provided administrative remedies (and there is none). To the contrary, the Legislature determined as a matter of public policy that an administrative remedy was the proper method to vindicate rights under NYLL § 220. Further, as the Second Circuit correctly observed: "This [*Wroble*] is in marked contrast to the ordinary putative third-party beneficiary contract case in which the intentions of the actual parties to the contract determine the availability of a third-party beneficiary claim." (A-35). It is also in marked contrast to the numerous cases upholding the right of parties to contractually determine where and how claims are heard and decided – for example, through waiver of a right to a jury, arbitration agreements, class action waivers, and the like.

Finally, Appellants' reliance on *Santana v. San Mateo Constr. Corp.*, is equally misplaced. 234 AD3d 562 (1st Dept 2025). This case did not address NYLL § 220, and

summarily held that workers entitled to prevailing wages under Administrative Code § 19-142 may enforce agreements as third-party beneficiaries, citing no New York case in support other than *Cox* and *Wroble* which, as discussed above, support Respondent's position that an express provision is required.

D. NYLL § 220 and Third-Party Beneficiary Contract Principles Can Be Reconciled to Honor the Public Policy Behind Both and This Court Should Preserve the Legislature's Chosen Structure.

Appellants ask this Court to convert NYLL § 220's clear administrative path for resolution of NYLL § 220 claims into a universal, private enforcement mechanism via "implied terms." This would side-step the fiscal officer's role, entirely collapse the distinction NYLL § 220 draws between public enforcement and private suits on actual promises, and undermine consistency and predictability for state municipalities and contractors alike. Nothing in NYLL § 220 indicates or supports that the Legislature, by implication or inference, intended to create a free-standing private cause of action for workers to backdoor assert NYLL § 220 claims untethered to actual contract text.

The Second Circuit certified the first question to this Court because it found that "sound public policy and other considerations point in cross-cutting directions." (A-39). The Second Circuit observed that, on one hand, the "Legislature's requirement that public works contracts specifically include a prevailing wage commitment *suggests* it intended to give workers a private contract claim to enforce the prevailing wage right." *Id.* (emphasis added). The Court also observed that, on the other hand, "under ordinary common law principles in New York, that's not how third-party beneficiary claims

usually work. And Comfort Systems makes a fair point that Plaintiffs chose to pursue a third-party beneficiary breach of contract claim rather than pursue administrative claims." *Id.*[2]

Addressing the Second Circuit's first point: nothing about NYLL § 220(3)(a) creates a private right of action for workers or third-party beneficiary rights. NYLL § 220(3)(a) states, in pertinent part, "[s]uch contracts shall contain a provision that each laborer, workman or mechanic, employed by such contractor, subcontractor or other person about or upon such public work, shall be paid the wages herein provided." *Id.* It mentions nothing about entitling workers to bring an individual action to enforce NYLL § 220's terms in a private lawsuit.

The Legislature does not act through "suggestion" or "inference" when it can (and does) speak directly on the appropriate enforcement mechanisms, and courts will not imply the creation of a private cause of action absent clear legislative intent. *See Maldovan v. County of Erie,* 39 NY3d 166, 171-172, 174-175 (2022) (holding if the "legislature had intended to create a private right of action… the legislature is of course free to make that intent clear" and this Court will not "relax" the "common law rule" despite an "especially appealing class of cases" where a "well settled rule of law denies

[2] Appellants *did,* in fact, file a complaint with the New York State Department of Labor for allegedly unpaid prevailing wages. *See Maddison v. Comfort Systems USA (Syracuse), Inc., d/b/a ABJ Fire Protection Co., Inc.,* Case No. 5:17-cv-00359-LEK-MJK, Dkt. 25, Reply to Counterclaim, ¶ 7 (Mar. 7, 2018). Appellants separately brought third-party beneficiary breach of contract claims against Respondent despite having also filed with the New York State Department of Labor.

recovery in cases like this, and that rule, by its nature, bars recovery…"); *Ortiz v. Ciox Health LLC,* 37 NY3d 353 (2021) (declining to find implied private right of action where enforcement mechanisms already expressly exist in the statute, and where legislature affirmatively provided mechanisms for enforcing other related provisions of the law, but did not do so here); *Sheehy v. Big Flats Community Day, Inc.*, 73 NY2d 629, 636 (1989) ("Where the Legislature has not been completely silent but has instead made express provision for civil remedy, albeit a narrower remedy than the plaintiff might wish, the courts should ordinarily not attempt to fashion a different remedy, with broader coverage" on the basis of a different legal theory that address the same alleged wrong).

Konkur v. Utica Academy of Science Charter School, 38 NY3d 38 (2022) is instructive. In *Konkur,* the Court considered whether the statutory language in a different section of the NYLL – NYLL §198-b, which prohibits wage kickbacks and specifically addresses prevailing wages[3] – contained an "implied private right of action." *Id.* at 39. The Court found that where the Legislature expressly provided for enforcement mechanisms in the statute itself—as it does here through administrative procedures – that this indicates the Legislature "considered how best to effectuate its intent and provided the avenues

[3] NYLL § 198-b(2) provides that "Whenever any employee who is engaged to perform labor shall be promised an agreed rate of wages for his or her services, be such promise in writing or oral, *or shall be entitled to be paid or provided prevailing wages or supplements pursuant to article eight or nine of this chapter*, it shall be unlawful for any person, either for that person or any other person, to request, demand, or receive, either before or after such employee is engaged, a return, donation or contribution of any part of 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." (Emphasis added).

for relief it deemed warranted." *Id.* at 43. This Court declined to "find another enforcement mechanism beyond the statute's already comprehensive scheme," despite plaintiff's argument that the NYLL contained language that could be read to "infer" a private right of action. *Id.* at 43-44.

Indeed, where the Legislature has intended for provisions of the NYLL to be enforced individually in court, it has expressly provided, in the text of the statute, for an individual private right of action. *See e.g.,* NYLL § 198. The existence of explicit private remedies in *other* sections of the NYLL – but not in NYLL § 220 – further undermines any implication that the language in NYLL § 220(3)(a) creates some implied contractual term and backdoor/hybrid NYLL § 220/breach of contract cause of action. Finding an implied contract term would abrogate decades of established third-party beneficiary breach of contract principles and create a concomitant private contract claim for workers to pursue claims indirectly under NYLL § 220. Had the Legislature intended to create such a cause of action, it would have stated so directly and explicitly. In fact, it would collapse the entire statutory scheme to read NYLL § 220's requirement that contracting parties include prevailing wage language in contracts to also mandate that workers have a statutorily-mandated right to a private action under a third-party beneficiary breach of contract theory – where no such statutory mandate exists and the Legislature instead created the opposite: a fulsome administrative remedy. "Rather than support an implied right of action here, analysis of the remedies provided for in [other sections of the NYLL]," coupled with the fact that the Legislature provided an express

administrative remedy in NYLL § 220 (and no private right of action, *see supra* at Point I, §§ A, B), further supports the conclusion that reading NYLL § 220(3)(a) to create a plenary private right of action to enforce NYLL § 220's requirements "would be inconsistent with the comprehensive statutory enforcement scheme." *Konkur,* 38 NY3d at 44-45; *accord Varela v. Invs. Ins. Holding Corp.,* 81 NY2d 958 (1993) (given the Legislature's "provision for private causes of action in other portions of the [law], and the absence of a similar provision for enforcing [article at issue], we conclude the Legislature did not intend to create a private cause of action…").

It is for these policy reasons that this Court has declined to create a private cause of action even when contract language contradicts statutory requirements directly addressing the terms of such contracts. In *Schlessinger v. Valspar Corp.*, for example, the plaintiffs brought a claim for breach of contract. 21 NY3d 166 (2013). The defendant, however, concededly acted in conformity with the express contract terms – just as Respondent did here. Accordingly, plaintiff could only succeed on her breach of contract claim if a separate statute – General Business Law § 395-a[4] – rendered a provision in the contract (upon which defendant relied in its performance) null and void, therefore casting the defendant into breach. *Id.* at 171. The Court held that plaintiff could not succeed on her claim, reasoning:

Unlike certain other provisions in the General Business Law, there is no

[4] General Business Law § 395-a says that "[n]o maintenance agreement covering parts and/or service shall be terminated at the election of the party providing such parts and/or service during the term of the agreement." The agreement at issue in *Schlessinger* did just that.

> express or implied private right of action to enforce section 395-a. Instead, the legislature chose to assign enforcement exclusively to government officials. Additionally, *the legislature did not include in section 395-a specific language invalidating inconsistent contract provisions*… We are unwilling to subvert the legislature's choice to leave such enforcement mechanisms out of General Business Law § 395-a by endorsing private actions for breach of contract… *As in this case, then, the purported claim would not have existed absent provisions in a statute… We conclude that 'to accept [plaintiff's] pleading as valid would invite a backdoor, private cause of action to enforce the [act] in contradiction to our holding… that no private right to enforce that statute exists.*

Id. at 171 (emphasis added).

Here, as in *Schlessinger*, Appellants seek to create, by implication, a private right of action based solely on the terms of NYLL § 220(3)(a), despite the plain language of the contracts and fact that the Legislature explicitly did not create such a right, instead choosing to develop robust administrative remedies. As in *Schlessinger,* this Court should not subvert the Legislature's choice by inviting a backdoor, private cause of action to enforce NYLL § 220, in contradiction to the Legislature's clear design that no direct private right of action exists and an administrative process is preferable as a matter of public policy.[56]

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[5] Appellants argue that Courts will "refuse to enforce contract provisions that violate public policy." (App. Br. at 3-4). They do not identify any explicit contract provision they contend should "not be enforced." Instead, they argue that the contract *omits* language. Appellants also argue that Courts should refuse to enforce contracts that violate law or public policy. *Id.* If that were true, then they would have no third-party beneficiary right at all, as the contract would be voided.

[6] The 100+ year old cases cited by Plaintiffs in support of their position that this Court should find an implied term based solely on the language of NYLL § 220(3)(a) are inapposite. None involve third-party beneficiary claims. *See* App. Br. at 8, *citing Doey v. Clarence P. Howland Co., Inc.,* 224 NY30 (1918) (case involving application to vacate award of industrial commission, not breach of contract); *Hicks v. British Am. Assur. Co.*, 162 NY 284 (1900) (factually-distinguishable insurance case denying contract claim based on party's failure to provide notice within limitation period); *People ex rel City of N.Y. v. Nixon,* 229 NY 356 (1920) (case involving writ of prohibition, not private breach of contract dispute

Instead, NYLL § 220 and established third-party beneficiary breach of contract principles can be reconciled in a way that honors both Legislative-intent and black-letter common law principles. NYLL § 220 requires public works contracts to include prevailing-wage terms. When those terms are omitted and workers are not paid prevailing wages, the Legislature has already provided a remedy: pursue a NYLL § 220 claim through the statute's administrative enforcement mechanism – not an improper third-party beneficiary claim based on a non-existent contract term. As evidenced by this Court's holding in *Konkur*, this reading of the statute does not violate public policy in any way – it honors it. 38 NY3d at 43-44. Far from Appellants' contention that the "prevailing wage law would quickly become a nullity," (App. Br. at 14), workers can still *fully pursue* their statutory rights as the Legislature intended, through the statute's robust administrative procedures.

Moreover, if prevailing wage provisions are incorporated in the contract at-issue, and workers are third-party beneficiaries of those contracts, then workers may alternatively pursue a third-party beneficiary breach of contract claim. But that is only if the cause of action satisfies established third-party beneficiary principles, including that the contract contains express language supporting their cause of action. Workers (of course) cannot pursue this distinct, non-statutory, common law cause of action

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between two private parties); *City of Troy Unit of Rensselaer County. Chapter of Civ. Serv. Empl. Assn. v. City of Troy,* 36 AD2d 145, 147 (3d Dept 1971) (not third-party beneficiary claim, and at-issue contract specifically stated that it incorporated "any rights" accorded the employees), *affd sub nom* 30 NY3d 549 (1972).

when the basic common law requirements are not met. To hold otherwise would unravel the Legislature's "powerful administrative mechanism for the enforcement of a strong public policy…" (*Cayuga-Onondaga*, 89 NY2d at 401-02) and decades of New York precedent defining when a non-party to a contract may sue as an intended third-party beneficiary. It would also create a sweeping and dangerous precedent, with far-reaching consequences outside of the prevailing wage context, exposing scores of private agreements and contracting parties to litigation by any non-contracting party asserting that some real – or invented – public policy entitles them to enforce contractual terms that simply do not exist.

The "public policy" cases Appellants rely upon reinforce Respondent's position by emphasizing the distinction between the public policy behind the payment of prevailing wages, on the one hand, and the completely different question regarding what forum is available to workers to vindicate their statutory rights, on the other hand. The former – *i.e.* the payment of prevailing wages – is fully protected by the administrative enforcement mechanisms articulated by the Legislature in the statute, while the latter – the available forum to pursue such claims – has been directly set out by the Legislature as an administrative forum. There is no public policy supporting that workers are entitled to bring a private, backdoor, third-party beneficiary cause of action.

Cayuga-Onondaga Counties Bd. of Coop. Educ. Servs. v. Sweeney, for example, addresses the administrative procedures in NYLL § 220, and specifically distinguishes proceedings initiated under NYLL § 220 (which the Court held fall "well within the vindication of a

public interest category"), from proceedings brought "seeking only personal redress" (like Appellants' purported third-party beneficiary claim here). 89 NY2d at 401-03. This Court recognized that, like here, there may be "procedural bar[s] to the suit of a private individual." *Id.* at 403. Similarly, in *Bucci v. Vil. of Port Chester*, this Court considered proceedings brought by workers *pursuant to NYLL § 220* and held that NYLL § 220 is a "unique statutory scheme" and that in "the plan of the statute, the administrative determination of the prevailing rate of wages becomes the foundation for the workman's suit against his employer." 22 NY2d 195, 201 (1968). Similarly, in *Bridgestone/Firestone, Inc. v. Hartnett*, the Court considered a determination made pursuant to the administrative procedures set forth in NYLL § 220, not a third-party beneficiary breach of contract claim. 175 AD2d 495, 496-497 (3d Dept 1991). In addition, in *Twin State CCS Corp. v. Roberts,* the Court reviewed a determination made after a compliance hearing pursuant to NYLL § 220. 72 NY2d 897, 898 (1988). Finally, in *E. Williamson Roofing & Sheet Metal Co. v. Parish,* the Court held that the Legislature's "express imposition of liability and creation of particular remedies suggests that the Legislature did not intend to impose any other liability or create other remedies," and that unless a "preexisting common law" remedy exists (which is not the case here), the "Legislature intended the specific remedies it created to be the exclusive remedies." 139 AD2d 97, 104 (4th Dept 1988).

None of the above cases hold that, as a matter of public policy, workers have a right to bring a third-party beneficiary breach of contract claim. Quite to the contrary,

as the above cases reinforce, the correct application of preexisting New York common law pertaining to third-party beneficiary breach of contract claims does not violate any public policy in New York, especially given the robust statutory administrative enforcement procedures available to workers.

Although Appellants cynically suggest that employers will "avoid paying prevailing wages" by omitting the statutorily-required language, this could not be farther from the truth. The prevailing wage obligation derives from NYLL § 220, not contract law. And, whether workers are entitled to prevailing wages is governed by the statute, not private contract. Accordingly, contractors cannot "avoid" paying prevailing wages by virtue of failing to include the statutory language in their contracts. And there are many non-nefarious reasons why a contractor may not include the prevailing wage language in its contracts. For example, the contractor may genuinely believe that the contract does not implicate Article 8 (as is the case here).

Further, if contractors fail to include the statutorily-required language in their contracts, when they were required to do so, and fail to pay workers accordingly, then there are (as discussed extensively above) administrative mechanisms in place to address that. But it is improper and without any legal support to create a *private, contract-based* cause of action to allow workers to bring backdoor claims under NYLL § 220 when the Legislature was clear that no such private right exists.

Here, Appellants chose to pursue contract claims as third-party beneficiaries. As such, they are subject to the legal framework and remedies of contractual claims,

including the developed common law regarding when a non-party to a contract can (and cannot) sustain an intended third-party beneficiary breach of contract claim. As set forth above, under the common law, a non-party to a contract cannot pursue an intended third-party beneficiary breach of contract claim unless they are, in fact, an intended third-party beneficiary of the at-issue contract. These common-law precepts are fatal to Appellants' claims, as they cannot point to any contract language entitling them to prevailing wages under a third-party beneficiary breach of contract theory.

One court that has squarely addressed this issue held the same. *See Seidel v. Hoffman Floor Covering Corp.*, 2012 U.S. Dist. LEXIS 105212, *7 (EDNY July 26, 2012, No. 09-cv-4027). In *Seidel,* the Court held that, "because there is no evidence that Defendants contracted to pay its laborers a prevailing wage, the issue in this case is whether Plaintiff can maintain a breach of contract case even though he cannot point to a contract with a prevailing wage clause. *The Court thinks not.*" *Id.* at *6. (emphasis added). The Court reasoned that a "[p]laintiff needs to prove what [the employer] actually promised before he can prevail in a breach of contract case." *Id.* at *8. Further, "[b]ecause there is no evidence that Defendants actually agreed to pay its workers a prevailing wage, Plaintiff cannot maintain a breach of contract action…" *Id.* at *12-13.

In *Seidel*, the plaintiff argued (like Appellants here), that "because Section 220 requires the prevailing wage provision to appear in public works contracts, it doesn't matter whether the prevailing wage language actually appeared in the contracts…". *Seidel,* 2012 U.S. Dist. LEXIS 105212, at *6-7. The *Seidel* Court (correctly) disagreed,

citing this Court's decision in *Fata* and other authorities, holding: "In short, although Section 220 sets out what [a party] was *supposed* to promise in its public works contracts, Plaintiff needs to prove what [the party] *actually* promised before he can prevail in a *breach of contract* case." *Id.* at *8 (emphasis added). The *Seidel* Court noted that "a rule limiting contract claims to cases where there was an actual agreement to pay prevailing wages does not deny laborers all of the protections afforded them by Section 220. Those laborers may avail themselves of Section 220's statutory enforcement mechanism, as the Court of Appeals suggested in *Fata*." *Id.* at *10-11.[7]

For these reasons, the Court should answer the first certified question in the negative. The promise to pay prevailing wages is *not* implicit in every contract, and individuals employed on public works projects cannot sue their employers for breach

[7] Appellants cite three cases to support their argument that "every public work contract carries with it an obligation to pay prevailing wages that is enforceable through a third-party beneficiary claim, regardless of the subjective intent of the contracting party" (App. Br. at 9-10) – none are on point. In *Hernandez v. NJK Contractors, Inc.*, 2013 WL 12363005 (EDNY Feb. 12, 2013, No. 09-cv-4812), the court: 1) acknowledged that to seek a statutory remedy, plaintiffs were required to exhaust their administrative remedies, 2) appeared to agree with the holding in *Seidel*, and 3) then strained to distinguish the facts in its case from those in *Seidel*. *Id.* at *8 and n. 10. In *Machuca v. Collins Bldg. Servs., Inc.*, 82 Misc 3d 1211(a) (NY Sup Ct 2024), the Court found third-party beneficiary standing because the contracts at issue included an express commitment to comply with applicable laws. No similar language is alleged here. In *Chicas v. Kelco Constr., Inc.*, 2023 WL 5016457 (SDNY July 25, 2023, No. 121CV09014JGLCSDA), the contracts included an agreement to pay prevailing wages. The court even observed: "New York courts have held that, in order for workers to bring a third-party breach of contract claim under NYLL section 220, *the contract between the employer and the municipality must expressly state that a prevailing wage will be paid*." *Id.* at *4 (internal citations omitted, emphasis added). And, the court *granted* defendant's motion to dismiss, because the plaintiffs claiming to be third-party beneficiaries had not identified the "contracts and the relevant provisions of those contracts" upon which they were basing their claim. *Id.* at *5, *adopted Chicas v. Kelco Constr., Inc.*, 2023 WL 5278515, at *1 ("Plaintiffs have not sufficiently pled the contracts under which they are asserting third-party beneficiary rights, the parties to those contracts and the relevant provisions of those contracts").

of contract to enforce the prevailing wages requirements of NYLL § 220 if the employer's written contract does not include a promise to pay prevailing wages.

POINT II: ONE-YEAR CONTRACTUALLY-SHORTENED LIMITATIONS PERIODS IN ALARM INSPECTION CONTRACTS ARE VALID, ENFORCEABLE, AND FULLY CONSISTENT WITH NEW YORK PUBLIC POLICY; THEY HONOR CPLR § 201, DECADES OF CASE LAW, AND REGULATE TIMING WITHOUT DISABLING RIGHTS.

Appellants urge this Court to adopt a sweeping, categorical rule that any contractually-shortened limitations period is unenforceable against workers (and non-parties to the contract) when such workers assert prevailing-wage claims under a third-party beneficiary theory. That position is fundamentally inconsistent with New York's well-established public policy favoring freedom of contract and, again, directly contradicts the governing statutory framework.

Here, the governing fire alarm testing and inspection contracts Respondent entered into with various customers each include a clause shortening the statute of limitations for a cause of action against Respondent to one year, stating: "No action shall be brought against Company more than one year after accrual of the cause of action." (A-10). Appellants bring third-party beneficiary breach of contract claims against Respondent based on these same contracts. Consequently, CPLR § 201 controls, and its plain language expressly authorizes "a shorter [limitations] time" in a written agreement. In bringing their claims as alleged third-party beneficiaries, Appellants cannot, on the one hand, selectively invoke alleged contractual benefits (here, implied-

term prevailing wages) while, on the other hand, disregard other contract terms (such as the contractual limitations provision); rather, Appellants are "bound by the conditions and limitations created by the contract." *Timberline Elec. Supply Corp. v. Ins. Co. of N.A.*, 72 AD2d 905, 906 (4th Dept 1979), *affd* 52 NY2d 793 (1980) ("Order affirmed, with costs, for reasons stated in the memorandum at the Appellate Division"). To hold otherwise would upend settled law and undermine New York public policy, including New York's public policy favoring freedom of contract.

A. New York Courts Consistently Uphold One-Year Statutory Limitations Periods Expressly Agreed to in Contracts, Including in Cases Involving Construction, Alarm Contracts, and Wage Claims.

Contrary to Appellants' public policy arguments, the shortening of limitations periods is *statutorily authorized* in New York. *See* CPLR § 201 ("An action… must be commenced within the time specified… unless a different time is prescribed by law or *a shorter time is prescribed by written agreement*.") (emphasis added).

For over a century, this Court has repeatedly upheld contractual provisions that shorten the statutory period to bring a claim. *See, e.g.*, *Blitman Constr. Corp. v. Ins. Co. of N. Am.*, 66 NY2d 820, 822-823 (1985) (upholding 12-month contractual limitation period); *John J. Kassner & Co. v. City of New York*, 46 NY2d 544, 551 (1979) ("[A]n agreement which modifies the Statute of Limitations by specifying a shorter, but reasonable, period within which to commence an action is enforceable… provided it is in writing.") (internal citations omitted); *Sullivan v. Prudential Ins. Co. of Am.*, 172 NY 482, 485-86 (1902) (upholding six-month contractual limitations period).

This Court reaffirmed this principle less than two years ago in *Farage v. Assoc. Ins. Mgmt. Corp.*, 43 NY3d 152, 158 (2024) (citing *Kassner*, 46 NY2d at 551). In upholding a contractually-limited statutory period, this Court made clear that such provisions are enforceable so long as they are "fair and reasonable in view of the circumstances of each particular case." *Id.* (internal quotation omitted). This recent reaffirmation underscores that New York law does not prohibit contractual limitations periods – it embraces them when they comport with fairness and reasonableness.

Moreover, New York appellate courts have repeatedly confirmed that a one-year contractual limitations period is fair and reasonable in cases involving an alarm company. *See Diana Jewelers of Liverpool, Inc. v. A.D.T. Co.,* 167 AD2d 965, 965-966 (4th Dept 1990) (one-year contractual limitation period reasonable and did not violate public policy; it served "same general purpose as all Statutes of Limitation, i.e., the prompt resolution of disputes while the evidence is still fresh and available"); *Par Fait Originals v. ADT Sec. Sys., Northeast, Inc.*, 184 AD2d 472, 472 (1st Dept 1992) (despite public policy of the state that party may not insulate itself from gross negligence, "this does not mean that parties to a contract may not agree to be bound by a shortened statute of limitations for all claims, including those involving gross negligence"; enforcing one-year contractual limitation provision).[8]

[8] Federal Courts applying New York law have also repeatedly found contractual limitations periods in alarm contracts – such as those before this Court – are enforceable. *See*, *e.g.*, *Sidik v. Royal Sovereign Intl., Inc.*, 348 F Supp 3d 206, 214 (EDNY 2018) (holding, in case involving alarm services contract, that "Courts applying New York law have consistently upheld one-year contractual limitations

In fact, courts have found a shorter limitations period of just six-months is reasonable in the construction context, as well. *See, e.g., Dart Mech. Corp. v City of New York*, 121 AD3d 452, 452 (1st Dept 2014) (six-month contractual limitations provision in construction contract "not unreasonably short"); *Top Quality Wood Work Corp. v City of New York*, 191 AD2d 264, 264(1st Dept 1993) ("Six-month periods of limitation, identical to that here, have been upheld, and plaintiff has failed to demonstrate the unreasonableness of the limitations period in this case.").

Here, Appellants offer no authority to depart from settled law in New York: reasonable contractual limitations provisions are fully enforced. *See, e.g.*, *Kassner*, 46 NY2d at 552 ("The contractual limitations provisions in this case… undoubtedly, was included to shorten the Statute of Limitations. To that extent, of course, it would be enforceable.") (internal citations omitted).[9] Instead, Appellants merely argue that none of the cases cited by the Second Circuit are applicable here because they are not prevailing wage cases. *See* App. Br., at 27-28.[10] But, again, this is *not a prevailing wage case*

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periods…"); *Corbett v. Firstline Sec., Inc.*, 687 F Supp 2d 124, 128-129 (EDNY 2009) (considering an "Alarm Services Agreement," like those at issue here, and holding that the "one year period of limitations in the [agreement] is reasonable and enforceable under the prevailing law").

[9] Appellants' reliance on *David Tunick, Inc. v. Kornfeld*, 813 F Supp 988, 993 (SDNY 1993) is misplaced. In that case (involving an art auction), the court considered a motion to dismiss. The court, without opining on the length of the 4-week limitations period, found that there existed ambiguity as to the applicability and proper construction of the limitations period, and defendant's motion to dismiss was therefore denied on this ground.

[10] Appellants' cursory suggestion that they lacked "notice" (*see* App. Br., at 2, 20) and are therefore relieved of the limitations period is not supported by either the record or the case law. *See, e.g., Bristol Vill., Inc. v. La.-Pacific Corp.*, 170 F Supp 3d 488, 504-505 (WDNY 2016) ("As a third-party beneficiary of the contract, Plaintiff is bound by its limitations, regardless of whether Plaintiff had actual notice

under NYLL § 220. This is a *third-party beneficiary breach of contract* case – and cases upholding shortened contractual limitations periods in identical contexts are directly on point. And in any event, numerous courts have upheld contractual limitations periods shortening a party's time to bring a wage claim under the NYLL, and other employment-related claims. *See Hegazy v. Halal Guys, Inc.*, 2023 U.S. Dist. LEXIS 230397, *21 (SDNY Dec. 27, 2023, No. 22-cv-01880 (JHR) (KHP)) (upholding 1-year contractual provision shortening NYLL statute of limitations); *Keller v. About, Inc.*, 2021 U.S. Dist. LEXIS 86235, *8 (SDNY May 5, 2021, 21-CV-228 (JMF)) (collecting cases where "New York courts… enforce contract provisions shortening the limitations period for bringing any claim against a party," and holding enforceable a contractual provision shortening statute of limitations for claims under the NYLL); *Combs v. Same Day Delivery Inc.*, 2023 U.S. Dist. LEXIS 167954, at *24 (SDNY Sept. 20, 2023, 22-cv-00520-MKV) (approving shortening statute of limitations for NYLL claims); *accord Ortegas v. G4S Secure Sols. (USA) Inc.*, 156 AD3d 580, 580 (1st Dept 2017) ("New York courts have held that a six-month period to bring an employment claim is inherently

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of the… provision"; "although a third-party beneficiary is entitled to the rights possessed by the contracting parties, it cannot simultaneously challenge the limited remedy provisions… based on a theory that it did not have notice of the provisions"; expressly rejecting that the plaintiff needed "notice" to be bound by the term). A third-party beneficiary cannot "seek to have [its] cake and eat it too by relying on the [contract] to assert a claim while, at the same time, seeking to avoid the plain language of that [contract] by contending that it lacked notice." *Id.* (internal citations omitted); *accord U.S. Bank Nat'l Assoc. v. DLJ Mortg. Capital*, 38 NY3d 169, 178 (2022) ("[W]hen parties set down their agreement in a clear, complete document, their writing should as a rule be enforced according to its terms… [and] courts may not by construction add or excise terms, nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing.") (collecting cases, internal quotation marks omitted).

reasonable"); *Vega v. Fed. Exp. Corp.*, 2011 U.S. Dist. LEXIS 111531, at *17 (SDNY Sept. 29, 2011, No. 09 Civ. 07637 (RJH) (GWG)) (noting that "New York law recognizes the freedom of parties to contractually agree to a limitations period shorter than that prescribed by law" and finding plaintiff's state law discrimination claims time-barred since they were brought outside of the six month limitations period set forth in plaintiff's employment application); *Hunt v. Raymour & Flanigan*, 105 AD3d 1005, 1006 (2d Dept 2013) (dismissing discrimination and retaliation complaint pursuant to CPLR § 3211(a)(1) because defendant submitted documentary evidence showing plaintiff failed to initiate suit within time period required by his employment agreement); *Curtis v. Mariano*, 201 AD3d 584, 584-85 (1st Dept 2022) (affirming dismissal of complaint pursuant to CPLR § 3211(a)(1) and § 3211(a)(5) because plaintiff's discrimination claims were governed by a one-year contractual limitations period, and rejecting plaintiff's argument that the shortened statute of limitations was unconscionable); *Malik v. Heritage New York IPA, Inc.*, 2018 NY Misc LEXIS 3113, *15-16 (Sup Ct, NY County July 19, 2018, No. 65283/2017) (dismissing complaint with prejudice pursuant to CPLR § 3211(a)(7) because plaintiff failed to bring claims within agreement's six-month limitation provision); *Tyskowski v. IBM*, 2023 U.S. Dist. LEXIS 176662, *8-9, (SDNY Sept. 30, 2023, No. 22-CV-08207 (NSR)) (upholding arbitrator's determination that plaintiff's demand for arbitration of his age discrimination claim was untimely because it was filed after the expiration of the limitations provision in his arbitration agreement).

In sum, the one-year limitations period in the alarm contacts at-issue here is

enforceable, including as applied to third-party beneficiary wage claims.

B. Third-Party Beneficiaries Are Bound By the Terms of the Underlying Contract.

It is undisputed that "[a] third-party beneficiary does not have greater rights than the promisee under the agreement sued upon." *Barnum v. Millbrook Care Ltd. Partnership*, 850 F Supp 1227, 1234 (SDNY 1994), *affd*, 43 F3d 1458 (2d Cir 1994). By extension, where a party to the contract "can no longer enforce the covenant" to pay "under the Agreement's internal… statute of limitations, the third party beneficiary… is also time-barred under the Agreement's internal limitations period." *Id.* at 1234-35; *see also Burns Jackson Miller Summit & Spitzer v. Lindner*, 59 NY2d 314, 336 (1983) ("The contracts having expired before the strike, any rights of plaintiff as a third-party beneficiary of them expired with it.").

In *Krugman & Fox Constr. Corp. v. Elite Assocs., Inc.*, for example, a third-party beneficiary sought to obtain money due to it under a "*labor payment* bond entered into specifically to secure payment to [the third-party beneficiary]." 167 AD2d 514, 515 (2nd Dept 1990) (emphasis added). The Court held that the third-party beneficiary was "bound by the terms of the bond," including a one-year contractual limitations provision. *Id.* The Court reasoned: "a provision setting forth a reasonable, albeit abbreviated, limitation period is valid and enforceable [against a third-party beneficiary]." *Id.* Because the third-party beneficiary brought its claim outside of the one-year limitations period, the claim was time-barred. *Id.* at 515-516, *appeal denied by* 77

NY2d 806 (1991).

Similarly, in *Timberline,* the Court held:

> Any right [third-party] has under the suretyship agreement arises because of [the third-party's] status as a third-party beneficiary. As such [third-party] is bound by the conditions and limitations created by the contract. Thus, [third-party's] right to a remedy depends on its being able to show that it commenced this action within the limitation period set forth in the suretyship contract; viz., within one year…

72 AD2d at 906, *affd* 52 NY2d 793; *accord Inner City Drywall Corp. v. Reliance Ins. Co.*, 263 AD2d 438, 438-439 (1st Dept 1999) (third-party beneficiary claims barred by 1-year contractual limitation period; abbreviated contractual limitations period was "valid and enforceable"); *see also Lynbrook Glass & Architectural Metas Corp. v. Elite Assocs.,* 225 AD2d 525, 526 (2nd Dept 1996) (third-party beneficiary claim barred by 90-day notice provision in underlying *labor payment bond*; "It has been uniformly held that a third-party beneficiary is strictly bound by the terms" of the underlying payment bond).

Appellants cite no authority that a contractually-shortened limitations period does not apply to third-party beneficiaries, or that the one-year period at issue here is unreasonable in any way. Instead, as discussed further in Section C *infra*, Appellants' attempt to undermine well-settled principles of New York contract law by vaguely citing to "public policy." But their argument is *not* supported by the pertinent statutory scheme, the relevant case law, or the underlying legislative history.

C. The Contractually-Shortened Limitations Period is Fully Consistent With Public Policy and the Statutory Scheme.

As discussed at length above, the NYLL does not provide a "substantive right"

to seek private damages in Court for alleged violations of Article 8 of the NYLL – let alone for the entire six-year statute of limitations applicable to breach of contract claims – which is exactly what Appellants seek.[11] Appellants' reliance upon the provisions of NYLL § 220, its legislative history, and cited cases is, therefore, completely misplaced.

1. There is No Substantive Right to Pursue a Backdoor NYLL § 220 Claim, in Court, for the Entire 6-Year Statute of Limitations Applicable to Contract Claims.

There is no language in NYLL § 220 (or CPLR § 201) that prohibits contracting parties from agreeing to contractually-shorten the limitations period to bring a breach of contract claim. Indeed, the NYLL § 220 statutory framework does not even *allow for a private right of action* for workers to bring a NYLL § 220 claim, until they have exhausted their administrative remedies. And the relevant statutory framework affirmatively permits the shortening of statutory time frames in CPLR § 201, without exception for prevailing wage cases.

Given the text of NYLL § 220 clearly and unambiguously does not provide for a private right of action – and the ability of parties to agree to shorter contractual limitations period is *expressly permitted* under CPLR § 201 – Appellants' reliance on the legislative history of NYLL § 220 is wrong. *See* App. Br. at 4-6 (discussing legislative

[11] The statute of limitations to bring a claim for breach of contract is six years. CPLR § 213. NYLL § 220 requires the fiscal officer to investigate prevailing wage claims with a three-year lookback. *See, e.g.,* NYLL § 220-b(2)(c). And NYLL § 220(7) requires that the fiscal officer make either an order, determination, or other disposition within six months from the date of the filing of the complaint. *See* NYLL § 220(7). Accordingly, Appellants ask this Court to adopt a mandatory six-year limitations period for a backdoor NYLL § 220 claim beyond what the Legislature provided in the statute itself.

history of prevailing wage laws); App. Br., at 22-25 (comparing Section 220 with the FLSA), at 26-27 (discussing the role of administrative remedies under Section 220). The public policy behind whether workers are *entitled* to prevailing wages is entirely distinct from whether there is any public policy mandating that they should have an unfettered right to bring a private breach of contract claim for the full six-year contractual limitation period – no such public policy exists.

In fact, this Court's continued reaffirmance of the ability to contractually-shorten the limitations period (*see supra* at Point II, §§ A, B) and the Legislature's inaction to adopt a private right of action (let alone a prohibition on shortening the limitations period in private contracts) *favors* enforcement of the one-year contractual limitations provisions at issue here. Had the New York legislature intended to guarantee an employee's ability to seek unpaid prevailing wages in court via a private action for a full six-year period, it could have easily done so. It did not.

The New York Legislature is no stranger to speaking on these issues when it deems appropriate. In other contexts, the Legislature prohibited agreements waiving the right to bring a claim, for example, in the context of unemployment insurance benefits. *See* NYLL § 595 (prohibiting agreements whereby an employee waives rights to unemployment insurance benefits). Tellingly, and conspicuously, there is no similar provision anywhere in NYLL § 220.

In fact, New York's Legislature has repeatedly considered, and rejected, the very relief Appellants seek from this Court. In 2015, Senator Jack Martins proposed Senate

Bill 2015-S4388A which, if signed into law, would have amended the NYLL to "deem[] unconscionable, void and unenforceable" any provision in "any contract waiving any substantive or procedural right or remedy relating to a claim of… non-payment of wages or benefits." *See* NY Senate Bill 2015-S4388A.[12] However, the Legislature *rejected* adopting this proposal into law, as Senator Martins' Bill died in Committee. *Id.* Subsequent versions of the same Bill were proposed – and failed – in the New York Senate and Assembly in the 2017-2018, 2019-2020, 2021-2022, and 2023-2024 legislative sessions.[13]

Yet, despite the lack of any statutory prohibition on the freedom of contract, or recognition that this Court has repeatedly upheld limitations periods in similar contexts as reasonable, Appellants argue that this Court should create a special carve-out for *third-party beneficiary* breach of contract claims, and that even though the parties to a contract agreed to a shortened contractual limitation period, a third-party non-party to the contract should not be so bound. This is non-sensical.

Appellants further argue that enforcing contractual provisions in a *third-party beneficiary claim* will somehow deprive them of their substantive right to bring a *prevailing*

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[12] The New York State Senate, Senate Bill S03298, available at https://www.nysenate.gov/legislation/bills/2015/2015-s4388a (last accessed January 25, 2026).

[13] The New York State Assembly, Assembly Bill A01424, available at https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A01424&term=2023&Summary=Y&Text=Y (last accessed January 25, 2026). The New York State Senate, Senate Bill S03298, available at https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=S03298&term=2023&Summary=Y&Memo=Y&Text=Y (last accessed January 25, 2026).

wage claim. *See* App. Br., at 22 n.2 (claiming ability to bring prevailing wage claims would be extinguished if contractual terms enforced), at 25 n.4 (discussing forfeiture of wages). This is (again) non-sensical. The plain text of NYLL § 220 sets forth detailed administrative procedures for employees to make a claim for prevailing wages, and nothing about the one-year contractual limitations provision in a contract to which Appellants were not even a party abridges the rights bestowed upon workers pursuant to NYLL § 220 in any way. *See* NYLL § 220(7)-(8).[14] The substantive ability for employees to pursue allegedly unpaid prevailing wages is fully intact exactly as the Legislature intended, regardless of any contractual limitations provision. Simply put, here, Appellants opted to file a contract-based claim. Accordingly, they are bound by the laws of contract in bringing their third-party beneficiary claim.

2. The Shortened Statute of Limitations Provision is Consistent With New York's Strong Public Policy Favoring Freedom of Contract.

"Freedom of contract is itself deeply rooted in public policy." *New England Mut. Life Ins. Co. v. Caruso*, 73 NY2d 74, 81 (1989); *accord 159 MP Corp. v. Redbridge Bedford, LLC*, 33 NY3d 353, 356, 359 (2019) (New York has "strong public policy favoring freedom of contract," and "a right of constitutional dimension"). As this Court

[14] For these same reasons, Appellants' contention that the "purpose of the prevailing wage law… would be undermined if contracting parties were permitted… to enforce a shorter statute of limitations against those workers," (App. Br. at 20), is utterly false. The Court's decision regarding whether private commercial parties can agree to a shorter statute of limitations in their alarm contracts has absolutely no impact on the "prevailing wage law" embodied in NYLL § 220 – or any bearing on workers' rights as provided in that section – which all remain fully intact.

recognized:

> In keeping with New York's status as the preeminent commercial center in the United States, if not the world, our courts have long deemed the enforcement of commercial contracts according to the terms adopted by the parties to be a pillar of the common law.

Id. at 356. The public policy in favor of freedom of contract "both promotes certainty and predictability and respects the autonomy of commercial parties in ordering their own business arrangements." *Id.* at 360.

As such, "[t]he principle that contracts in contravention of public policy are not enforceable should be *applied with caution* and only in cases plainly within the reasons on which the doctrine rests." *Grullon v. Delta Air Lines, Inc.*, 2021 U.S. App. LEXIS 38168, *2 (2d Cir Dec. 27, 2021, No. 20-3207-cv) (internal citations omitted) (emphasis added). "For a contract to be void as against public policy, it should… be quite clearly repugnant to the public conscience." *Id.*

While this Court has the power to set aside agreements on public policy grounds, this Court's '"usual and most important function' is to enforce contracts rather than invalidate them 'on the pretext of public policy,' unless they 'clearly… contravene public right or the public welfare.'" *159 MP Corp.*, 33 NY3d at 361 (2019) (internal quotations omitted) (finding waiver of right to commence declaratory judgment action enforceable and not void as against public policy). This Court explained "[w]here the Legislature has not expressly precluded waiver of a right or obligation, we have deemed that to be a significant factor militating *against* invalidation of a contract term on public policy

grounds." *Id.* at 362. Notably, before discussing the "limited group of public policy interests" that are "sufficiently fundamental to outweigh the public policy favoring freedom of contract" this Court provided a list of employee-based rights that were found *insufficient* to outweigh public policy favoring freedom of contract – including a "waiver of Labor Law protections." *Id.* at 361 (internal citation omitted).

In ignoring the public policy behind freedom of contract, and arguing against the contractually-bargained-for shortened limitations period at issue here, Appellants rely on three Appellate court decisions – *Santana v. San Mateo Constr. Corp.*, 234 AD3d 562 (1st Dept 2025), *Wroble v. Shaw Envtl. & Infrastructure Engg. of New York, P.C.*, 166 AD3d 520 (1st Dept 2018), and *Singh v. Zoria Hous., LLC*, 163 AD3d 1025 (2d Dept 2018) – none of which address contractual limitations provisions, and instead discuss clauses barring third-party beneficiary claims altogether.[15] But clauses barring suits altogether are entirely different from timing provisions of reasonable duration – which are routinely upheld in New York as promoting predictability and prompt resolution of disputes while the evidence is still fresh and available. A one-year contractual limitation period is reasonable and widely enforced; it does not negate the claim, it regulates when to bring it.[16]

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[15] For the reasons stated *supra,* Point I, §§ C, 2, these cases cite no support for the proposition that contracting parties cannot agree to disclaim third-party beneficiary rights, and are therefore wrongly decided. *See, e.g., 159 MP Corp.,* 33 NY3d at 361 ("The fact that a contract term may be contrary to a policy reflected in the Constitution, a statute or a judicial decision does not render it unenforceable").

[16] In fact, even the one case cited by Appellants, albeit from a different state, is distinguishable on this same point. *See Thomas v. A.G. Elec., Inc.*, 304 SW3d 179, 188 n.13 (Mo. App., E. Dist. 2009) (noting,

The very argument Appellants advance here, namely, that the shortened statute of limitations provision is void as against public policy when wage claims are involved, was considered by the Southern District of New York in *Combs v. Same Day Delivery Inc.* and rejected out of hand. In *Combs*, the plaintiffs argued that dismissal of a NYLL wage claim based on a shorted contractual limitation period was "against public policy because the conditional relinquishment of [p]laintiffs' rights to recover damages for unpaid wages for a full six-year period would contravene the NYLL's legislative policy 'aimed at redressing the power imbalance between employer and employee.'" *See Combs*, 2023 U.S. Dist. LEXIS 167954, *24. In rejecting the argument, the Court stated that "[p]laintiffs' reliance on the NYLL's overarching goal to protect employees from wage violations is precisely the type of 'general considerations of supposed public interests' that the Supreme Court cautioned district courts against invoking…" *Id.* at *25.

Indeed, further supporting the reasonableness of the one-year limitation provision, NYLL § 220-g provides a similar one-year time period for employees to "bring an action to recover from" a bond for "unpaid wages and supplements… due to persons furnishing labor." NYLL § 220-g. Per NYLL § 220-g, said action "may be brought against the contractor, the subcontractor, or the issuer of such bond, without prior notice, within one year of the date of the last alleged underpayment." *Id.*

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unlike New York law, that Section 431.030 of Missouri law "mandates that '[a]ll parts of any contract or agreement… which either directly or indirectly limit or tend to limit the time in which any suit or action may be instituted, shall be null and void.'"). Notably, the Missouri Court "d[id] not decide [the limitations] issues" in reaching their decision. *Id.* at 188.

Accordingly, the one-year contractual limitation is fully consistent with the prevailing wage law itself, further supporting its reasonableness, and undermining any contention that the one-year limitation period undermines any public policy.[17] To the contrary, it is fully consistent with New York's strong public policy favoring freedom of contract.

3. Appellants' Analogy to Federal Law is Inapposite.

Appellants contend that the rationale for decisions refusing to enforce a shortened statute of limitations provisions with respect to the federal Fair Labor Standards Act ("FLSA") apply equally to claims brought under the NYLL's prevailing wage law. *See* App. Br., at 22-25. Appellants' contention fails for several reasons.

First, again, this case does not involve a FLSA or NYLL wage claim – it involves a *third-party beneficiary claim to recover for an alleged breach of contract*. Contract-based claims in New York are subject to CPLR § 201, party autonomy, and New York's public policy in favor of freedom of contract. Appellants cannot try to circumvent this (or their obligation to exhaust their administrative remedies pursuant to NYLL § 220 if they wish to bring a NYLL § 220 claim directly) by now arguing (incorrectly) that principles applicable to claims brought under federal or state wage and hour statutes apply. *See*

[17] Appellants' argument that permitting parties to contractually shorten the statutory timeframe to bring an action would "impermissibly favor the administrative remedy over [a] private [cause of action]" (App. Br. at 26-27) is baseless and completely ignores that the Legislature intended to create a "powerful administrative mechanism for the enforcement of a strong public policy…". *Cayuga-Onondaga*, 89 NY2d at 401-402. In fact, the Legislature *requires* contractors to "inform each laborer, worker, or mechanic of his or her right *to contact the fiscal officer* or some other representative if, at any time… he or she does not receive the proper prevailing rate of wages…". NYLL § 220(3-a)(a)(ii) (emphasis added). Far from inconsistent with Legislative intent, the Legislature *intended* for workers to pursue their administrative remedies to "enforce their prevailing wage rights" (App. Br. at 27).

App. Br., at 27-29. They do not.

Indeed, as this Court suggested in *Cayuga-Onondaga*, while in enforcement proceedings pursuant to NYLL § 220, the Commissioner is not "bound by the one-year Statute of Limitations" (in that case contained in Education Law § 3812(2-b)), this could provide a "procedural bar to the suit of a private individual." 89 NY2d at 403. Similarly, in *Fata*, this Court recognized that "limitations not only of the scope of the statutory obligation but also of the remedy for its violation may apply also to the contractual obligation…". 289 NY at 406.

Appellants' reliance on *Tanges v. Heidelberg N. Am., Inc.* is misplaced. 93 NY2d 48, 54-55 (1999). *Tanges* merely evaluated whether a statute of limitations was "procedural" in resolving a conflict of laws issue. It has nothing to do with the issue presented here, which is whether Appellants can rely on the existence of a contract while at the same time repudiating select terms and limitations not to their advantage. They cannot.

Second, more broadly, Appellants' FLSA arguments fail to recognize that the FLSA is a uniquely remedial statute that is unlike the NYLL in material respects.[18] Most obvious, the FLSA provides a federal statutory private right; NYLL § 220 does not. In addition, Appellants' arguments ignore that courts apply differing levels of scrutiny to FLSA and NYLL claims. On the one hand, courts have held that individuals' rights under the FLSA are non-waivable, except in certain circumstances, such as where the

[18] Appellants also ignore that the statute of limitations for a FLSA claim is two years for non-willful violations, 29 U.S.C. § 255(a), yet cite to FLSA cases to advocate for a six-year limitation period here.

waiver or release of FLSA rights is given as part of a settlement supervised by a court or the Secretary of Labor. *See Cheeks v. Freeport Pancake House, Inc.*, 796 F3d 199, 203 (2d Cir 2015). This rationale and reasoning largely form the basis for the decisions cited by Appellants finding contractual provisions shortening the FLSA statute of limitations unenforceable. *See Boaz v. FedEx Customer Info. Servs., Inc.*, 725 F3d 603, 607 (6th Cir 2013) (relying on waiver analysis in finding limitations period in employment agreement invalid as applied to FLSA claims; court did not consider NYLL claim); *Castellanos v. Raymours Furniture Co.*, 291 F Supp 294, 299, n 3 (EDNY 2018) (finding a provision shortening the FLSA statute of limitations unenforceable because *FLSA* rights cannot be waived, but noting that plaintiffs did "not argue that the [agreement's] statute of limitations is unenforceable against their state law claims"); *Glenn v. Monterrey Sec. Consultants, Inc.*, 2025 WL 2026302, *4 (ND Ill, July 21, 2025, No. 24-cv-8260) (FLSA holding focused on waiver analysis; court did not consider NYLL claims); *Pappas v. City of New York*, 2024 WL 2093472, *5 (SDNY May 9, 2024, No. 23-cv-6010 (LJL)) (holding provision that shortened the limitations period for FLSA claims to be unenforceable; court did not address a NYLL claim); *Crespo v. Kapnisis*, 2022 WL 2916033, *6 (EDNY July 25, 2022, No. 21-cv-6963(BMC)) (analyzing shortened limitations period under only FLSA); *Hackler v. R.T. Moore Co., Inc.*, 2017 WL 6535856, *4 (MD Fl Dec. 21, 2017, No. 2:17-cv-262) (same).

On the other hand, the opposite is true as applied to the NYLL and "there is no express restriction on… waiver of wage and hour claims" under the NYLL. *Wright v.*

Brae Burn Country Club, Inc., 2009 WL 725012, *4 (SDNY Mar. 20, 2009, No. 08-CV-3172) (waiver of "NYLL wage claims… does not raise any public policy concerns or run counter to legislative purpose"). Indeed, it is well-settled that "settlement agreements for NYLL-related claims… do not enjoy the FLSA's expressed prohibition of waiver…." *Young Min Lee v. New Kang Suh Inc.*, 2020 WL 5504309, *3 (SDNY Sept. 11, 2020, No. 17-cv-9502 (NSR)) (dismissing NYLL claim based on agreement). This Court has endorsed waiver of NYLL § 220 claims, as well. *See Manning v. Joseph*, 304 NY 278, 281 (1952) ("releases executed by petitioners… preclude their recovery of the additional compensation" for prevailing wages).

As discussed above, this same reasoning led numerous Courts to uphold contractual provisions shortening the time in which a party can bring a NYLL claim. *See supra* at Point II, § A. Accordingly, there is simply no basis to analogize this case to FLSA cases, and cases addressing NYLL claims hold that a shortened contractual limitation provision is fully permissible.

For these reasons, the second certified question should be answered in the affirmative. Agreements that shorten the statute of limitations in public works contracts to one year are fully enforceable, including against workers who are not even parties to the contract, but who purport to bring third-party beneficiary breach of contract claims pursuant to the same.

CONCLUSION

In conclusion, the New York Legislature did not intend for workers to have an unwaivable right to bring a backdoor NYLL § 220 prevailing wage claim as third-party beneficiaries, as Appellants seek here. Rather, the statute itself expressly compels the opposite conclusion. Parties seeking to pursue a claim for unpaid wages under NYLL § 220 must pursue their administrative remedies, unless they can point to express contractual language supporting their common law third-party beneficiary status. Even if they can successfully do that, Appellants are bound by the terms of the contracts which they seek to enforce, including (here) the one-year contractually-shortened limitations period to bring a contract-based claim. The one-year contractual limitations period is fully consistent with Legislative intent, long-standing New York case law, and New York's public policy in favor of freedom of contract.

Dated: Fairport, New York
January 27, 2026

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CERTIFICATE OF COMPLIANCE WITH RULE 500.13(c)

I, Jessica F. Pizzutelli, certify that the attached Respondent's Brief, containing 12,557 words, complies with the Court's word count limit as described in Rule 500.13(c).

Dated: Fairport, New York
January 27, 2026

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STATE OF NEW YORK)		**AFFIDAVIT OF SERVICE**
)	ss.:	**BY OVERNIGHT FEDERAL**
COUNTY OF NEW YORK)		**EXPRESS NEXT DAY AIR**

I, Tyrone Heath, 2179 Washington Avenue, Apt. 19, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above or at

On January 27, 2026

deponent served the within: **Brief for Respondent**

upon:

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the address(es) designated by said attorney(s) for that purpose by depositing **3** true copy(ies) of same, enclosed in a properly addressed wrapper in an Overnight Next Day Air Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of New York.

Sworn to before me on January 27, 2026.

Mariana Braylovskiy

MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2026

T. Heath

Job# 389778