

Papantoniou v V. Barile Inc.

2015 NY Slip Op 32211(U)

October 30, 2015

Supreme Court, New York County

Docket Number: 100632/2012

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: LUCY BILLINGS
J.S.C. Justice

PART 46

Index Number : 100632/2012
PAPANTONIOU, GEORGE
vs
V. BARILE INC.
Sequence Number : 004
AMEND CAPTION/PARTIES

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 5, were read on this motion to ~~for~~ join a plaintiff, amend the complaint, and
certify a class
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1-3
Answering Affidavits — Exhibits _____ No(s). 4
Replying Affidavits _____ No(s). 5

Upon the foregoing papers, it is ordered that ~~this motion is~~ :

The court grants plaintiffs' motion to join a plaintiff as a class representative, to amend the complaint, and to certify a class, C.P.L.R. §§ 901, 902, 1002(a), 3025(b), and denies defendant Fidelity and Deposit Company's cross-motion for summary judgment dismissing the claims against Fidelity and Deposit Company, C.P.L.R. § 3212(b), pursuant to the accompanying decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED
NOV 18 2015
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 10/30/15

Lucy Billings, J.S.C.
LUCY BILLINGS
J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 46

-----x

GEORGE PAPANTONIOU, individually and on behalf of all other persons similarly situated who are employed by V. BARILE INC. d/b/a V. BARILE FIRE PROTECTION CO., V. BARILE ELECTRICAL CONTRACTING, INC., and/or their affiliates, subsidiaries, and parent companies with respect to certain Public Works Projects awarded by the CITY OF NEW YORK, the NEW YORK CITY HOUSING AUTHORITY, and OTHER GOVERNMENTAL ENTITIES,

Index No. 101057/2014

Plaintiffs

- against -

DECISION AND ORDER

V. BARILE INC. d/b/a V. BARILE FIRE PROTECTION CO., V. BARILE ELECTRICAL CONTRACTING, INC., and/or their affiliates, subsidiaries, and parent companies, FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and JOHN DOE BONDING COMPANIES,

Defendants

-----x

LUCY BILLINGS, J.S.C.:

FILED

NOV 18 2015

NEW YORK
COUNTY CLERKS OFFICE

I. BACKGROUND

This action claims that plaintiff and other similarly situated employees of defendants were not paid the prevailing wages and supplemental benefits for work performed on public work projects pursuant to contracts by V. Barile Inc., V. Barile Electrical Contracting, Inc., and their affiliates with various governmental entities. They include the New York City Housing Authority (NYCHA), the New York City Transit Authority, and the New York City Department of Environmental Protection and

Department of Corrections. Plaintiffs move to join Denis Ramos as a named plaintiff and class representative, C.P.L.R. § 1002(a); to amend their complaint to add claims by him as a class representative, C.P.L.R. § 3025(b); and for class certification. C.P.L.R. §§ 901, 902. Plaintiffs propose a class defined as all individuals employed by V. Barile Inc. d/b/a V. Barile Fire Protection Co. and V. Barile Electrical Contracting, Inc., who performed construction work and all work incidental thereto from January 2006 through the present, excluding any clerical, administrative, professional, or supervisory employees. Aff. of Jack L. Newhouse ¶ 1.

The proposed class alleges four claims for relief against defendants. (1) They breached public works contracts to pay prevailing wages and supplemental benefits. (2) They failed to pay the prevailing wages, supplemental benefits, and overtime compensation timely as mandated New York Labor Law §§ 191 and 220, in violation of New York Labor Law §§ 190, 198, and 198(1-a). (3) Defendant Fidelity and Deposit Company of Maryland as a surety is liable for payment of the prevailing wages and supplemental benefits not paid to the plaintiff class pursuant to the terms of the Fidelity and Deposit Company bonds. (4) Defendant John Doe Bonding Companies as sureties are liable for payment of the prevailing wages and supplemental benefits not paid to the plaintiff class pursuant to the terms of these companies' bonds.

Fidelity and Deposit Company opposes plaintiffs' joinder of

Ramos, amendment to the complaint, and class certification and cross-moves for summary judgment dismissing the complaint against this defendant. C.P.L.R. § 3212(b). Fidelity and Deposit Company maintains that neither the original named plaintiff Papantoniou nor Ramos is an adequate class representative, because neither demonstrates a claim against defendants. In particular, Fidelity and Deposit Insurance Company urges that plaintiffs' breach of contract claims fall under the federal Davis Bacon Act, 40 U.S.C. §§ 3141-48, which proscribes a private right of action to enforce contracts, directly or indirectly, for payments of prevailing wages according to federal schedules. See Cox v. NAP Constr. Co., Inc., 10 N.Y.3d 592, 607 (2008).

Fidelity and Deposit Company opposes plaintiffs' joinder of Ramos and amendment of the complaint on the further ground of prejudice, claiming plaintiffs' delay in seeking to add Ramos as a named plaintiff, despite knowing the original named plaintiff Papantoniou was an inadequate class representative, will cause additional legal expenses. For the purpose of these motions, the parties stipulate to the authenticity and admissibility of contracts, prevailing wage schedules, and payroll records presented to support the motion and cross-motion.

II. AMENDMENT OF THE COMPLAINT

C.P.L.R. § 3025(b) permits amendments to the complaint as long as they do not unfairly surprise or otherwise substantially prejudice defendants, and the proposed claims for relief, as alleged, are meritorious. A.L. Eastmond & Sons, Inc. v. Keevily,

Spero-Whitelaw, Inc., 107 A.D.3d 503, 503 (1st Dep't 2013); Kocourek v. Booz Allen Hamilton Inc., 85 A.D.3d 502, 504 (1st Dep't 2011); Fellner v. Morimoto, 52 A.D.3d 352, 353-54 (1st Dep't 2008). Plaintiffs bear the burden to demonstrate the merits of their proposed claims through admissible evidence. JPMorgan Chase Bank, N.A. v. Low Cost Bearings NY Inc., 107 A.D.3d 643, 644 (1st Dep't 2013); Greentech Research LLC v. Wissman, 104 A.D.3d 540, 541 (1st Dep't 2013); Yuko Ito v. Suzuki, 57 A.D.3d 205, 208 (1st Dep't 2008); Zaid Theatre Corp. v. Sona Realty Co., 18 A.D.3d 352, 355 (1st Dep't 2005). See Sepulveda v. Dayal, 70 A.D.3d 420, 421 (1st Dep't 2010).

Plaintiff George Papantoniou attests to his employment with V. Barile, Inc., doing business as V. Barile Fire Protection Co., and with V. Barile Electrical Contracting, Inc., from 2001 until 2011, on various public works projects at identified sites. Newhouse Aff. Ex. H ¶¶ 2-3. He alleges that he was paid only as an alarm technician despite performing an electrician's work, including pulling wires and installing electrical panels, controls, motors, and light fixtures; running pipes; performing work on valves and thermal couplings; and conducting hydrostatic tests and fire alarm and sprinkler inspections. Id. ¶¶ 5, 8-9.

Proposed plaintiff Denis Ramos attests that he worked for defendant employers from 2002 to 2009, on public works projects at identified sites, where he was pulling wires, installing electrical panels, running pipes, changing valves, sprinklerheads, and thermal couplings, and performing underground

work and hydrostatic tests. Id. Ex. I ¶¶ 2-3, 5. His tasks also included installing dry pipe valves and pumps, pre-action systems, and fire hose cabinets; repairing siamese connections; working on standpipe systems; and conducting fire alarm and sprinkler inspections. Id. ¶ 5. While he worked on different projects from Papantoniou, both Ramos and Papantoniou worked on public works projects performing construction work and work incidental to construction work within the scope of the proposed classwide claims.

Finally, Ramos attests that his supervisors instructed him to identify his trade classification as an alarm technician or plumber on invoices for the NYCHA projects, his rate of pay did not depend on the type of work performed, and he was not paid the prevailing wage and benefits. Id. ¶¶ 7-8, 13. Three additional employees attest to defendants' instructions to identify their trade classification as a fire alarm technician or plumber despite their performing electrical installation and inspection work. Id. Exs. J, K, and L.

Fidelity and Deposit Company insists that neither Papantoniou nor Ramos demonstrates a valid claim against any defendant because neither plaintiff identifies which corporation he worked for and thus whether Fidelity and Deposit Company issued bonds to that employer. Nevertheless, Fidelity and Deposit Company concedes that both Papantoniou's and Ramos's allegations specifically identify V. Barile Inc. and thus Papantoniou's claims and Ramos's proposed claims are against that

entity at minimum, to which Fidelity and Deposit Insurance Company issued bonds for public works projects at sites where plaintiffs were employed.

Fidelity and Deposit Company's further basis for denying amendment and dismissing the action is its exclusive reliance on the prevailing wage schedules under the Davis Bacon Act. 40 U.S.C. §§ 3141-48. First, these contracts govern only the contracts between plaintiffs' employers and NYCHA and only for projects that were federally funded, which Fidelity and Deposit Company fails to specify. Even under those contracts, the federal schedules do not negate Papantoniou's and Ramos's rights under state law to enforce the contractual obligations as well, of which Papantoniou and Ramos are undisputed third party beneficiaries. Cox v. NAP Constr. Co., Inc., 10 N.Y.3d at 602, 606. See Wysocki v. Kel-Tech Constr. Inc., 46 A.D.3d 251 (1st Dep't 2007). Nor does the federal law bar plaintiffs' claims under Labor Law §§ 191 and 220, that defendants failed to pay prevailing wages, supplemental benefits, and overtime compensation timely for work performed under public works contracts to which a governmental authority or agency was a party. De La Cruz v. Caddell Dry Dock & Repair Co., Inc., 21 N.Y.3d 530, 533 (2013).

Given that the amended complaint's claims are the same as the original complaint's claims, defendants will not suffer any prejudice. Brown v. Blennerhasset Corp., 113 A.D.3d 454, 455 (1st Dep't 2014); Fellner v. Morimoto, 52 A.D.3d at 353.

Fidelity and Deposit Company articulates no further reason to deny joinder and amendment other than plaintiffs' delay, which alone is an insufficient reason to deny the relief. McGhee v. Odell, 96 A.D.3d 449, 450 (1st Dep't 2012); Kocourek v. Booz Allen Hamilton, Inc., 85 A.D.3d at 504-505; Cherebin v. Empress Ambulance Serv., Inc., 43 A.D.3d 364, 365 (1st Dep't 2007).

Fidelity and Deposit Company nowhere indicates it has been hindered in the preparation or presentation of a defense so as to overcome the heavy presumption in favor of permitting joinder of Ramos as an additional named plaintiff and related amendment to the complaint. Harlem Real Estate LLC v. New York Cotu Economic Dev. Corp., 111 A.D.3d 549, 549 (1st Dep't 2013); McGhee v. Odell, 96 A.D.3d at 450; Kocourek v. Booz Allen Hamilton, Inc., 85 A.D.3d at 504; Cherebin v. Empress Ambulance Serv., Inc., 43 A.D.3d at 365.

III. FIDELITY AND DEPOSIT COMPANY'S CROSS-MOTION FOR SUMMARY JUDGMENT

To obtain summary judgment, Fidelity and Deposit Company must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence eliminating all material issues of fact. C.P.L.R. § 3212(b); Vega v. Restani Constr. Corp., 18 N.Y.3d 499, 503 (2012); Smalls v. AJI Indus., Inc., 10 N.Y.3d 733, 735 (2008); JMD Holding Corp. v. Congress Fin. Corp., 4 N.Y.3d 373, 384 (2005); Giuffrida v. Citibank Corp., 100 N.Y.2d 72, 81 (2003). Only if Fidelity and Deposit Company satisfies this standard, does the burden shift to plaintiffs to rebut that prima facie showing, by producing

evidence, in admissible form, sufficient to require a trial of material factual issues. Morales v. D & A Food Serv., 10 N.Y.3d 911, 913 (2008); Hyman v. Queens County Bancorp, Inc., 3 N.Y.3d 743, 744 (2004). In evaluating the evidence for purposes of Fidelity and Deposit Company's motion, the court construes the evidence in the light most favorable to plaintiffs. Vega v. Restani Constr. Corp., 18 N.Y.3d at 503; Cahill v. Triborough Bridge & Tunnel Auth., 4 N.Y.3d 35, 37 (2004). If Fidelity and Deposit Company fails to meet its initial burden, the court must deny summary judgment despite any insufficiency in plaintiffs' opposition. Vega v. Restani Constr. Corp., 18 N.Y.3d at 503; JMD Holding Corp. v. Congress Fin. Corp., 4 N.Y.3d at 384.

As discussed, Fidelity and Deposit Company's defense that the Davis Bacon Act bars plaintiffs' claims under state law, for breach of contract and for violations of the Labor Law due to defendants' failure to pay the prevailing wages and supplemental benefits, lacks support. Cox v. NAP Constr. Co., Inc., 10 N.Y.3d at 602, 606. Fidelity and Deposit Company maintains that the payroll records plaintiffs present to support their motion show Papantoniou was paid the prevailing wages and supplemental benefits according to the schedule set under the Davis Bacon Act. These payroll records, however, show the payments only on public works projects for NYCHA and only for 2007. Thus, even if federal law exclusively governed plaintiffs' claims of failure to pay prevailing wages and supplemental benefits, these records alone fall far short of establishing no such failure on any

project at any time by any employer, particularly as Fidelity and Deposit Company maintains that V. Barile Inc. and V. Barile Electrical Contracting, Inc., operated as separate entities. Only such a showing would entitle Fidelity and Deposit Company to summary judgment dismissing the action.

Fidelity and Deposit Company does not even attempt to explain how plaintiffs' evidence on which Fidelity and Deposit Company relies, relating only to NYCHA projects in 2007, disposes of plaintiffs' claims of underpayment on public works projects throughout their employment with defendants from 2001 to 2011 and thus demonstrates the absence of any viable claim against them. Even if plaintiffs were paid the prevailing wages for the trades shown in the NYCHA payroll documents, neither this nor any other evidence controverts plaintiffs' claim that they were not paid the prevailing wages for the actual work performed, because defendants instructed plaintiffs to use trade classifications that did not encompass the work plaintiffs performed. Fidelity and Deposit Company insists that the project contracts, not any employer's supervisor, dictate plaintiffs' trade classifications, yet presents no evidence, neither authenticated applicable contract provisions nor supervisors' affidavits or depositions, even to dispute plaintiffs' allegations, let alone to establish conclusively to the contrary. No affidavit or deposition denies that defendants instructed plaintiffs to use trade classifications that did not encompass the work plaintiffs performed. No admissible evidence contradicts the job duties

that plaintiffs describe they performed.

In sum, Fidelity and Deposit Company offers no evidence, other than plaintiffs' excerpt of records, demonstrating that plaintiffs were not underpaid the prevailing wage schedule rate on any of the public works projects identified by plaintiffs throughout their employment with defendants from 2006 to 2011. Newhouse Aff. Exs. H ¶ 3, I ¶ 3, J ¶ 3, K ¶ 3, L ¶ 3. Without authenticated applicable contract provisions, Fidelity and Deposit Company fails to show what wage schedules the contracts required. Nowhere does it demonstrate that it paid the statutorily or contractually required supplemental benefits to any class member. For all the above reasons, it fails to meet its initial burden to establish a prima facie defense to plaintiffs' claims through admissible evidence eliminating all material issues of fact. Therefore the court need not consider plaintiffs' opposition, Vega v. Restani Constr. Corp., 18 N.Y.3d at 503; Kebbeh v. City of New York, 113 A.D.3d 512, 512 (1st Dep't 2014), and denies defendant Fidelity and Deposit Company's cross-motion for summary judgment dismissing the complaint against Fidelity and Deposit Company. C.P.L.R. § 3212(b); Johnson v. Salaj, 130 A.D.3d 502, 503 (1st Dep't 2015); Ahmad v. City of New York, 129 A.D.3d 443, 444 (1st Dep't 2015); Roca v. 66-36 Yellowstone Blvd. Coop., 104 A.D.3d 520, 520 (1st Dep't 2013).

IV. CLASS CERTIFICATION

A. STANDARDS

One or more members of a class may sue as representative parties on behalf of all class members if plaintiffs meet the following prerequisites. C.P.L.R. § 901(a). (1) The class is so numerous that joinder of all members is impracticable. (2) Questions of law or fact common to the class predominate over any questions affecting only individual members. (3) The representative parties' claims are typical of the class' claims. (4) The class representatives will protect the class' interests fairly and adequately. (5) A class action is superior to other methods for the fair and efficient adjudication of this controversy.

Plaintiffs, as the parties seeking class certification, bear the burden to present evidence establishing these criteria. Kudinov v. Kel-Tech Constr. Inc., 65 A.D.3d 481, 481 (1st Dep't 2009). The criteria are to be construed liberally in favor of class certification. Id.; Pruitt v. Rockefeller Ctr. Props., 167 A.D.2d 14, 21 (1st Dep't 1991). The court may consider the merits of plaintiffs' claims only to the extent of ensuring those claims are not a sham. Pludeman v. Northern Leasing Sys., Inc., 74 A.D.3d 420, 422 (1st Dep't 2010); Kudinov v. Kel-Tech Constr. Inc., 65 A.D.3d at 482; Jim & Phil's Family Pharm. v. Aetna U.S. Healthcare, 271 A.D.2d 281, 282 (1st Dep't 2000).

B. PLAINTIFFS' SATISFACTION OF THE PREREQUISITES

1. Numerosity

Although at this early stage of the litigation plaintiffs need not show the exact number of class members, Kudinov v. Kel-Tech Constr. Inc., 65 A.D.3d at 481, the payroll documents presented by plaintiffs reveal more than 35 workers classified as alarm technicians and plumbers, and Papantoniou and Ramos attest that at least 40 workers performed the same types of work as these two plaintiffs. Newhouse Aff. Exs. H ¶ 11, I ¶ 10. See Stecko v. RLI Ins. Co., 121 A.D.3d 542, 542-43 (1st Dep't 2014). At oral argument Fidelity and Deposit Company conceded that a proposed class of this size meets the numerosity requirement for certification. As it would be impracticable to join that number of potential claimants individually, a conclusion Fidelity and Deposit company also does not dispute, the class satisfies the numerosity requirement. C.P.L.R. § 901(a)(1); Stecko v. RLI Ins. Co., 121 A.D.3d at 543; Dabrowski v. Abax Inc., 84 A.D.3d 633, 634 (1st Dep't 2011); Pesantez v. Boyle Env'tl. Servs., 251 A.D.2d 11, 12 (1st Dep't 1998).

2. Commonality

Common questions of fact and law predominate over individual questions. C.P.L.R. § 901(a)(2). All class members are employees of defendants V. Barile, Inc., V. Barile Fire Protection Co., which plaintiffs claim is simply a business name of V. Barile Inc., or V. Barile Electrical Contracting, Inc., whose bonds were issued by Fidelity and Deposit Company. The

predominant legal claims for all class members is defendants' failure to pay the prevailing wage rates, supplemental benefits, and overtime compensation timely as mandated New York Labor Law §§ 191 and 220, in violation of Labor Law §§ 190, 198, and 198(1-a), and in breach of contracts for public works projects to which defendant employers were parties. Stecko v. RLI Ins. Co., 121 A.D.3d at 543; Pludeman v. Northern Leasing Sys., Inc., 74 A.D.3d at 422-23; Yeger v. E*Trade Sec. LLC, 65 A.D.3d 410, 413 (1st Dep't 2009); CLC/CFI Liquidating Trust v. Bloomingdale's, Inc., 50 A.D.3d 446, 447 (1st Dep't 2008). Defendant bonding companies issued bonds to those employers for those projects. Any potential variation in the damages incurred by individual class members due to prevailing wage rates for different trade classifications for class members' work does not defeat the class' common claims. Nawrocki v. Proto Constr. & Dev., 82 A.D.3d 534, 536 (1st Dep't 2011); Kudinov v. Kel-Tech Constr. Inc., 65 A.D.3d at 482.

3. Typicality and Adequacy of Representation

Fidelity and Deposit Company opposes class certification primarily on the grounds that neither Papantoniou nor Ramos is a suitable class representative, as each fails to show a viable claim against defendants, and thus their alleged claims are not typical of the class. C.P.L.R. § 901(a)(3) and (4). Typicality is satisfied when the named plaintiffs' and the class' claims derive from the same course of conduct and are based on the same legal theory. Pludeman v. Northern Leasing Sys., Inc., 74 A.D.3d

at 423; Ackerman v. Price Waterhouse, 252 A.D.2d 179, 201 (1st Dep't 1998). The named plaintiffs' claims in this action are typical of the class, as they seek the same damages sought by the class based on defendants' underpayment and untimely payment of prevailing wages, supplemental benefits, and overtime compensation to workers performing public works projects from 2006 to 2011. C.P.L.R. § 901(a)(3); Stecko v. RLI Ins. Co., 121 A.D.3d at 543; Williams v. Air Servs. Corp., 121 A.D.3d at 442; Borden v. 400 E. 55th St. Assoc., L.P., 105 A.D.3d at 631.

The court has determined above that the named plaintiffs Papantoniou and Ramos at least allege viable claims of underpayment against defendants. Each of them need not raise every single claim against every employer on each project encompassed within the classwide claims. These representatives demonstrate awareness of their claims and an interest in prosecuting them sufficiently for class certification. Stecko v. RLI Ins. Co., 121 A.D.3d at 543; Williams v. Air Servs. Corp., 121 A.D.3d 441, 442 (1st Dep't 2014). Finally, nothing in the record suggests the named plaintiffs or the attorneys for the putative class will not act in the class' best interests, nor is the competence or experience of the class' attorneys questioned. C.P.L.R. § 901(a)(4); Nawrocki v. Proto Constr. & Dev., 82 A.D.3d at 535; Ackerman v. Price Waterhouse, 252 A.D.2d at 202.

4. Superiority

Fidelity and Deposit Company raises no question as to plaintiffs' showing of superiority. C.P.L.R. § 901(a)(5). The

class members' numerosity and the expenses entailed in bringing separate, individual actions outweigh any anticipated difficulties in managing a class action. Judicial resources would be taxed much more heavily in managing such numerous individual actions. C.P.L.R. § 902. When the amount of underpayment may result in damages so prohibitively low as to discourage class members from individually pursuing their claims, a class action provides a means of compensation for those individuals. Stecko v. RLI Ins. Co., 121 A.D.3d at 543; Williams v. Air Servs. Corp., 121 A.D.3d at 442; Nawrocki v. Proto Constr. & Dev. Corp., 82 A.D.3d at 536; Drizin v. Sprint Corp., 12 A.D.3d 245, 246 (1st Dep't 2004).

V. DISPOSITION

Because plaintiffs sufficiently demonstrate the merits of their claims and qualification for class certification, the court grants plaintiffs' motion to join Denis Ramos as a named plaintiff and to amend the complaint in the form attached as Exhibit B to the supporting Affirmation of Jack L. Newhouse, C.P.L.R. §§ 1002(a), 3025(b), and certifies the following class:

all individuals employed by V. Barile Inc. d/b/a V. Barile Fire Protection Co. and V. Barile Electrical Contracting, Inc., who performed construction work and all work incidental thereto from January 2006 through the present, excluding any clerical, administrative, professional, or supervisory employees.

C.P.L.R. §§ 901-903. The caption of this action shall be:

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GEORGE PAPANTONIOU and DENIS RAMOS,
individually and on behalf of all other
persons similarly situated who are
employed by V. BARILE INC. d/b/a/ V.
BARILE FIRE PROTECTION CO., V.BARILE
ELECTRICAL CONTRACTING, INC., and/or their
affiliates, subsidiaries, and parent
companies with respect to certain Public
Works Projects awarded by the CITY OF NEW
YORK, the NEW YORK CITY HOUSING AUTHORITY,
and OTHER GOVERNMENTAL ENTITIES,

Index No. 101057/2014

Plaintiffs

- against -

V. BARILE INC. d/b/a/ V. BARILE FIRE
PROTECTION CO., V. BARILE ELECTRICAL
CONTRACTING, INC., and/or their
affiliates, subsidiaries, and parent
companies, FIDELITY AND DEPOSIT COMPANY
OF MARYLAND, and JOHN DOE BONDING
COMPANIES,

Defendants

FILED
NOV 18 2015
NEW YORK
COUNTY CLERKS OFFICE

-----x

Because defendant Fidelity and Deposit Company fails to meet its
initial burden to establish a prima facie defense to plaintiffs'
claims through admissible evidence eliminating all material
issues of fact, the court denies Fidelity and Deposit Company's
cross-motion for summary judgment dismissing the complaint
against Fidelity and Deposit Company. C.P.L.R. § 3212(b).

DATED: October 30, 2015

Lucy Billings

LUCY BILLINGS, J.S.C.