

<b>Dantes v Megalopoli, LLC</b>
2021 NY Slip Op 30110(U)
January 7, 2021
Supreme Court, Kings County
Docket Number: 509990/2015
Judge: Reginald A. Boddie
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At an IAS Trial Term, Part 95, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York, on the 7th day of January 2021.

**P R E S E N T:**

Honorable Reginald A. Boddie, JSC

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AUSTIN DANTES, REGIS EDWARD, and HENRY LLOYD,

Plaintiffs,

Index No. 509990/2015  
Cal. No. 7 MS 19

-against-

**DECISION AND ORDER**

MEGALOPOLI, LLC, GEORGE VASILAKIS, VALILIEOS PAGANOS, VOLMAR CONSTRUCTION, INC., and TECTONIC,

Defendants.

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<u>Papers</u>	<u>Numbered</u>
MS 19	Docs. # 405-434, 437-438, 440-441

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Upon the foregoing cited papers, the decision and order on defendant George Vasilakis motion for summary judgment, pursuant to CPLR 3212, is as follows:

Plaintiffs alleged that from March 2013 through September 2014, they were employed by defendants Megalopoli, LLC (Megalopoli) and Tectonic Services Inc. (Tectonic), subcontractors hired by defendant Volmar Construction, Inc. (Volmar) and owned, operated and controlled by defendants George Vasilakis (Vasilakis) and Vasileios Paganos (Paganos), to perform carpentry work on three separate public improvement projects identified as the Queens Museum of Art (the Queens Museum), the Mid-Island United States Post Office (the Post Office) and Fort Dix Army Base (Fort Dix). They commenced this lawsuit to recover unpaid prevailing wages, supplemental benefits and fringe benefits and remedy violations of New York Labor Law (NYLL) §§ 220 & 223 and the New Jersey State Prevailing Wage Act (PWA) N.J.S.A. 34:11-56.25 et seq.

Defendant Vasilakis moved for summary judgment on the grounds that there is no valid or enforceable contract which renders him individually liable for any of the claims raised by plaintiffs or the two cross claims seeking indemnification raised by defendant Volmar. Specifically, Vasilakis denied that he, in his individual capacity, entered into any agreement with any party involving the employment of laborers, workers, or mechanics in relation to the Queens Museum of Art, the Mid-Island United States Post Office and/or Fort Dix Army Base projects. He averred plaintiffs and defendant Volmar have not and cannot proffer any evidence in admissible form to demonstrate that he, individually, was the plaintiffs' employer on any of the projects at issue, was a party to any contract for work to be performed at any of the projects at issue or agreed to indemnify any person or entity for any obligation or liability they may incur in relation to the performance of any work and any of the projects at issue.

Plaintiffs and Volmar opposed the motion. Plaintiffs argued Vasilakis was not credible and is liable as an employer pursuant to the Labor Law §§ 195 and 198. They contend they are owed the difference between what they were paid and the applicable prevailing wage rate on the grounds that Vasilakis allegedly had the power to hire and fire them, supervised and controlled their work schedules and/or conditions of their employment, determined their rate of payment and the method by which they were paid, and failed to maintain the required employment records. They testified Vasilakis paid them \$25 per hour, mostly in cash, delegated tasks, determined the job sites they worked and their schedules. They further testified that Vasilakis would book and pay for hotel rooms to accommodate them while they were working at the Fort Dix site.

Volmar argued Vasilakis' testimony has repeatedly contradicted itself such that he is not credible and his self-serving affidavit in support of this motion is not probative. It further argued that there are questions of fact as to whether Vasilakis was plaintiffs' employer which preclude

granting him summary judgment on plaintiffs' claims and its cross-claims. It further argued Vasilakis' arguments regarding its cross claims were "red herrings." It also proffered the affidavit of its vice president Peter Volandes, who attested "Megalopoli did not work at the United States Post Office Project during the time in question" and "Megalopoli had no contract with Volmar nor did they perform work for Volmar at Fort Dix Army Base, New Jersey." As to these assertions, documentary evidence attached, including work orders for the Queens Museum and the Post Office, and plaintiffs' testimony raise questions of fact as to these assertions and Vasilakis' denials.

Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). A party moving for summary judgment must make a prima facie showing of entitlement as a matter of law sufficient to demonstrate the absence of any material issues of fact, but once a prima facie showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish material issues of fact which require trial of the action (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman*, 49 NY2d at 562).

As an initial matter, Vasilakis argued for summary judgment on the grounds that plaintiff failed to alleged a common law cause of action or exhaust administrative remedies prior to commencement of this action. In determining a prior motion for summary judgment regarding the projects at the Post Office and Fort Dix, the Honorable Larry D. Martin held the New York common law and New York Law allow plaintiffs to bring an action for unpaid or underpaid wages and benefits on government contracts as third-party beneficiaries and found there were triable issues of fact including, but not limited to, whether plaintiffs have a claim for compensation based upon violations of the law as alleged in their complaint. This issue has previously been resolved

by the Court and is therefore denied here based on Justice Martin's December 19, 2018 decision and order. Further, this argument is rejected as to the Queens Museum project on the same grounds (*see Cos v NAP Constr. Co., Inc.*, 10 NY3d 592, 601-608 [2008]).

Turning to Vasilakis' argument for summary judgment on the grounds that he was not plaintiffs' employer, Labor Law § 190 (3) provides, an " 'Employer' includes any person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business or service." Vasilakis testified he was an engineer hired by Megalopoli as a general manager and his role was to manage materials and the progress of the projects. He attested that he was expected to review requests for bids/contract specifications, prepare contract bids, execute subcontracts, estimate project costs; order materials; attend project meetings with general contractors and/or owners and monitor project prosecution. Although Vasilakis testified that he never held any ownership interest in Megalopoli, he attested that Vasilesios Paganos (Paganos), the owner of Megalopoli, transferred ownership interest to him so he would receive a share of the profits of Megalopoli as the bonus/commission that he was promised. Moreover, Vasilakis' tax returns for the subject period raise a question of fact as they indicate he claimed profit or loss from Megalopoli. He also denied that plaintiffs ever worked directly for him or that he ever supervised, directed or controlled any of the work performed by plaintiffs for Megalopoli or any other entity at any of the project sites. However, plaintiffs testified that Vasilakis was their boss, paid their wages, directed their work, determined their schedules and arranged for out of state accommodations during the Fort Dix project, therefore raising a triable issue of fact.

Vasilakis' also sought summary judgment on Volmar's cross claims for indemnification on several grounds. Vasilakis argued executed copies of the required indemnification form were not annexed to Volmar's answer with cross claims or exchanged during discovery. He further

argued that Volmar’s cross claims were baseless as Volandes conceded the he, individually, was neither a party to the Post Office or Queens Museum subcontracts and did not agree to indemnify Volmar for any liabilities it may incur in connection with either project. He further argued that the Volmar also bears statutory and contractual liability for the underpayment of prevailing wages to plaintiffs and its indemnification claims should not be extended beyond its contractual indemnification claims against Megalopoli.

Here, Vasilakis failed to establish his entitlement to summary judgment on this issue and questions of fact in this record also preclude summary judgment on Volmar’s cross claims for indemnification at this time (see *Winegrad*, 64 NY2d at 853; see *Bellefleur v Newark Beth Israel Medical Center*, 66 AD3d 807, 808 [2d Dept 2009]). First, Vasilakis failed to establish entitlement to summary judgment on the issue of his liability to plaintiffs. Volandes’ affirmation, on which Vasilakis relied, also failed to resolve this issue. He attested, “Megalopoli [not Vasilakis] did not work at the United States Post Office Project during the time in question” and “Megalopoli [not Vasilakis] had no contract with Volmar nor did they perform work for Volmar at Fort Dix Army Base, New Jersey.” However, documentary evidence attached and plaintiffs’ testimony raise questions of fact. Moreover, issues of credibility in testimony or conflicts in the evidence presented, as here, are not for the Court to resolve on summary judgment (see *Brown v Kass*, 91 AD3d 894, 895 [2d Dept 2012]). Accordingly, summary judgment is denied (see *Zuckerman*, 49 NY2d at 562).

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Honorable Reginald A. Boddie  
Justice, Supreme Court