

**Trustees of the N.Y. City Dist. Council of
Carpernters Pension Fund v Prime Contrs., Inc**

2021 NY Slip Op 31699(U)

May 20, 2021

Supreme Court, New York County

Docket Number: 157515/2020

Judge: Frank P. Nervo

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, PART IV

-----X
TRUSTEES OF THE NEW YORK CITY DISTRICT
COUNCIL OF CARPENTERS PENSION FUND,
et al

Plaintiffs,

-against-

PRIME CONTRACTORS, INC, et al

Defendants.
-----X

DECISION AND ORDER

Index Number

157515/2020

Mot. Seq. 001 & 002

NERVO, J.:

This matter having been recently transferred to Part IV, and motions 001 and 002 seeking similar relief, the Court issues the instant order addressing both pending motions.

Motion sequences 001 and 002 seek similar relief. By motion sequence 001, plaintiffs seek an extension of the time to serve defendant “John Doe No. 1,” as at the time of that motion the identity of John Doe 1 was unknown. Thereafter, in responses to plaintiffs’ FOIL request, they learned the identity of John Doe 1, Fidelity Deposit Company of Maryland. In motion sequence 002, plaintiffs seek to amend their summons and complaint to include Fidelity Deposit Company of Maryland (hereinafter “Fidelity”) in place of “John Doe No. 1,” pursuant to CPLR §§ 1024 and 3025(b). Plaintiffs further seek to extend the time to serve Fidelity to 30 days from the Court’s instant order. No party has opposed either motion.

CPLR § 1024 provides that an action may be maintained against an unknown party by “designating so much of his name and identity as is known.” It further provides that “[i]f the name or remainder of the name becomes known all subsequent proceedings shall be taken under the true name and all prior proceedings shall be deemed amended accordingly” (*id.*).

At the commencement of this action, the identity of the surety that issued the payment bond for the subject construction project was unknown to plaintiffs. Following a FOIL request with the city agency plaintiffs believed contracted for the work, plaintiff learned that Fidelity issued a bond guaranteeing all wages and benefits for work performed on the project. Consequently, plaintiffs have established they exercised the requisite due diligence in attempting to ascertaining the identity of the unknown defendant (*see generally Bumpus v. New York City Transit Auth.*, 66 AD3d 26 [2d Dept 2009]).

CPLR § 306-b sets forth the deadlines to serve the summons and complaint and also provides for extensions of those deadlines upon good cause or in the interest of justice. Furthermore, CPLR 3025(b) provides that pleadings may be amended at any time, and leave is generally, absent prejudice, freely given, provided the amendment is not “palpably insufficient” (*Edenwald Contracting Co. Inc. v. City of New York*, 60 NY2d 957 [1983]; *see also Bank of America N.A. v. DeNardo*, 151 AD3d 1008 [2017]).

Movants have shown good cause why the time to serve Fidelity should be extended, namely that the identity of Fidelity, as surety, was unknown to plaintiffs at the commencement of this action. Upon learning the identity of the surety, plaintiffs promptly sought to amend the pleadings and for an extension to serve the surety.

Accordingly, it is

ORDERED the motions are granted; and it is further

ORDERED that movants shall serve the amended summons complaint, attached as exhibit E to the instant motion, upon defendants within 30 days of notice of entry of this decision and order; and it is further

ORDERED that within ten days of its entry by the Clerk, Plaintiff shall serve a copy of this order with notice of entry on the County Clerk and the Clerk of the Trial Support Office, and it is further

ORDERED that upon service on the County Clerk and Clerk of the Trial Support Office, the County Clerk and the Clerk of the Trial Support Office shall amend their records to

reflect the new caption, which shall read:

TRUSTEES OF THE NEW YORK CITY DISTRICT
COUNCIL OF CARPENTERS PENSION FUND
WELFARE FUND, ANNUITY FUND, APPRENTICESHIP,
JOURNEYMAN RETAINING, EDUCATIONAL AND
INDUSTRY FUND, TRUSTEES OF THE NEW YORK CITY
DISTRICT COUNCIL OF CARPENTERS RELIEF AND
CHARITY FUND, and THE CARPENTER CONTRACTOR
ALLIANCE OF METROPOLITAN NEW YORK

-against-

PRIME CONTRACTORS, INC., and FIDELITY DEPOSIT
COMPANY OF MARYLAND

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: May 20, 2021

ENTER:



Hon. Frank P. Nervo, J.S.C.