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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

ZACHARY OWENS, CONRADO MORA, and
LUIS GARCIA, individually and on behalf of
other similarly situated,

Plaintiffs,

v.

BETHLEHEM CONSTRUCTION
INCORPORATED; FIDELITY AND DEPOSIT
COMPANY OF MARYLAND; ZURICH
AMERICAN INSURANCE COMPANY;
FEDERAL INSURANCE COMPANY; and ST.
PAUL FIRE AND MARINE INSURANCE
COMPANY,

Defendants.

BETHLEHEM CONSTRUCTION,
INCORPORATED, a Washington corporation,

Third Party Plaintiff,

v.

WASHINGTON STATE DEPARTMENT OF
LABOR AND INDUSTRIES, a division of the
State of Washington,

Third Party Defendant.

No. 08-2-31509-6 KNT

~~PROPOSED~~ *RFM* ORDER GRANTING
PLAINTIFFS MOTION FOR PARTIAL
SUMMARY JUDGMENT ON
AFFIRMATIVE DEFENSE OF
EQUITABLE ESTOPPEL AND
DENYING DEFENDANT BETHLEHEM
CONSTRUCTION, INC.'S MOTION FOR
SUMMARY JUDGMENT DISMISSING
PLAINTIFFS CLAIMS

Presentation Hearing Date: 07-21-2010
Hearing Time: 9:00 a.m.

(MSJ Hearing Date: 06/11/10
Hearing Time: 2:00 p.m.)

1 The Court has before it Bethlehem Construction Inc.'s Motion for Summary Judgment
2 Dismissing Plaintiffs' Claims and Plaintiffs' Motion for Partial Summary Judgment on
3 Affirmative Defenses of Equitable Estoppel. The Court considered the following documents:
4

- 5 • Defendant Bethlehem Construction Inc.'s Motion for Summary Judgment
6 Dismissing Plaintiffs' Claims (sub# 86)
- 7 • Declaration of Robert Connelly in Support of Defendant Bethlehem
8 Construction's Motion for Summary Judgment (sub# 89, 95)
- 9 • Declaration of Michael Addleman in Support of Defendant Bethlehem
10 Construction's Motion for Summary Judgment (sub# 90, 96)
- 11 • Declaration of Linda Addleman in Support of Defendant Bethlehem
12 Construction's Motion for Summary Judgment (sub# 88, 94)
- 13 • Declaration of Aaron Roblan in Support of Defendant Bethlehem Construction's
14 Motion for Summary Judgment (sub# 87, 93)
- 15 • Plaintiffs' Motion for Partial Summary Judgment on Affirmative Defenses of
16 Equitable Estoppel (sub# 84)
- 17 • Declaration of Adam J. Berger in Support of Plaintiffs' Motion for Partial
18 Summary Judgment on Affirmative Defenses of Equitable Estoppel (sub# 82)
- 19 • Appendix of Non-Washington Authorities (sub# 83)
- 20 • Praecipe, filed in Support of Defendant Bethlehem Construction Inc.'s Motion for
21 Summary Judgment Dismissing Plaintiffs' Claims and Defendant and Third Party
22 Plaintiff Bethlehem Construction, Inc.'s Motion for Partial Summary Judgment
23 Against the Department of Labor and Industries (sub# 85)
- 24 • Defendant Sureties' Joinder in Bethlehem Construction, Incorporated's Motion for
25 Summary Judgment Against Plaintiffs and Joinder in Opposition to Plaintiffs'
26 Motion for Summary Judgment (sub# 127)
- Defendant Bethlehem Construction Inc.'s Reply in Support of its Motion for
Summary Judgment Dismissing Plaintiffs' Claims (sub# 131)
- Supplemental Declaration of Aaron Roblan in Support of Defendant Bethlehem
Construction's Motion for Summary Judgment (sub# 126)
- Defendant Bethlehem Construction Inc.'s Response to Plaintiffs' Motion for
Summary Judgment (sub# 125)
- Plaintiffs' Opposition to Defendant Bethlehem Construction Inc.'s Motion for
Summary Judgment Dismissing Plaintiffs' Claims (sub# 129)
- Appendix of Non-Washington Authorities (sub# 130)
- Declaration of Martin S. Garfinkel in Support of Plaintiffs' Opposition to
Defendant Bethlehem Construction Inc.'s Motion for Summary Judgment
Dismissing Plaintiffs' Claims (sub# 128)
- Plaintiffs' Reply in Support of Motion for Partial Summary Judgment on
Affirmative Defenses of Equitable Estoppel (sub# 132)
- Second Declaration of Martin S. Garfinkel (sub# 133)

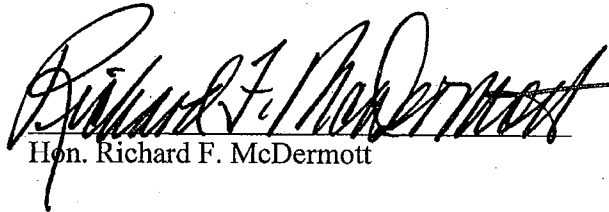
1 The Court also considered the oral argument of the parties.

2 It is the Court's view that Plaintiffs are not bound by the representations, acts, or
3 omissions of the Department, as the Plaintiffs are not in privity with the Department. The
4 statements identified by defendant Bethlehem were made by the Department, not Plaintiffs.
5 The statutory right of Plaintiffs to sue to recover prevailing wages and bond proceeds is
6 independent of the Department's regulatory and enforcement authority. Plaintiffs did not ask the
7 Department to be their agent or otherwise assign any of their rights to the Department. No
8 reason of justice compels the Court to deny Plaintiffs their right to sue to recover prevailing
9 wages or bond proceeds.
10

11 Based on the foregoing, the Court DENIES Defendant Bethlehem Construction Inc.'s
12 Motion for Summary Judgment Dismissing Plaintiffs' Claims, and the defendant Sureties'
13 Joinder in that motion. The Court GRANTS Plaintiffs' Motion for Partial Summary Judgment
14 on Affirmative Defenses of Equitable Estoppel.
15

16 The Court STRIKES all of Defendant Bethlehem Construction Incorporated's affirmative
17 defenses no. 15 and no. 5.
18

19 DATED this 10th August
20 day of ~~July~~, 2010.

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22 Hon. Richard F. McDermott
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Presented by:

OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.

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