

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

JAMES NARDONE, Individually, and as
Assignee of AHEARN CONSTRUCTION,
INC.,

Plaintiff,

v.

Case No.: 11-006143
Division K

ALTIER MECHANICAL SERVICES,
INC., a Florida Corporation, and
FIDELITY & GUARANTY INSURANCE
UNDERWRITERS, INC.,
a foreign insurer,

Defendants.

**Order Granting Fidelity and Guaranty Insurance Underwriters, Inc.'s
Dispositive Motion for Summary Judgment**

This matter came before the Court on February 6, 2013 on defendant Fidelity and Guaranty Insurance Underwriters, Inc.'s ("Fidelity") dispositive motion for summary judgment dated June 15, 2012. Fidelity was represented at the hearing by W. Gray Dunlap, Jr. and plaintiff James Nardone, individually and as assignee of Ahearn Construction, Inc. ("Nardone"), was represented by Daniel P. Mitchell; also present at the hearing were James Arnold, Jr., underlying counsel for Nardone, and Gregory Giannuzi, counsel for co-defendant Altier Mechanical Services, Inc. ("Altier"). Having considered Fidelity's motion and supporting memoranda of law, Nardone's memoranda of law in

opposition to Fidelity's motion, and the argument of counsel for Fidelity and Nardone, and having otherwise been fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Court finds that since neither the original complaint nor the amended complaint in the underlying case asserted negligent conduct by the sub-contractor, Altier, one would have to infer negligence on the part of Altier.

2. Accordingly, Fidelity had no duty to defend Ahearn as an additional insured in connection with the underlying case; because Fidelity had no duty to defend Ahearn, it has no duty to indemnify Ahearn in connection with the consent judgment entered in the underlying case.

3. Fidelity's dispositive motion for summary judgment is granted.

4. The Court will enter a separate final judgment in favor of Fidelity and against Nardone.

DONE AND ORDERED at Tampa, Hillsborough County, Florida, this ___ day of February, 2013.

**ORIGINAL SIGNED
CONFORMED COPY**

FEB 15 2013

Hon. William P. Levens
Circuit Court Judge

**WILLIAM P. LEVENS
CIRCUIT JUDGE**

Copies furnished to: Daniel P. Mitchell
W. Gray Dunlap, Jr.
Gregory Giannuzzi