

**Ramnath v Persaud**

2015 NY Slip Op 32193(U)

October 8, 2015

Supreme Court, Queens County

Docket Number: 708275/14

Judge: Valerie Brathwaite Nelson

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE VALERIE BRATHWAITE NELSON

IA Part 7

Justice

\_\_\_\_\_  
SATROHAN RAMNATH, x

Plaintiff,

-against-

MUKESH PERSAUD and EVERETT N.  
NIMETZ,

\_\_\_\_\_  
Defendants. x

Index  
Number: 708275/14

Motion  
Date: July 2, 2015

Motion Calendar No.: 101

Motion Sequence No.: 1

**FILED**  
**OCT 21 2015**  
**COUNTY CLERK**  
**QUEENS COUNTY**

The following papers read on this motion by plaintiff Satrohan Ramnath for an order granting summary judgment in his favor and directing that the sum of \$40,000 held in Escrow Deposit #1, pursuant to the parties' agreement be released to him; directing that the sum of \$40,000.00 held in Escrow Deposit #2 be released to him, and in the alternative that the \$40,000.00 held in Escrow Deposit #2 be retained by defendant Everett N. Nimetz, as escrow agent, pending the further order of the court and not be released to defendant Mukesh Persaud. Defendant Nimetz cross moves in opposition and seeks summary judgment on his counterclaims and cross claims, directing that the \$40,000.00 in Escrow Deposit #1 presently held by Nimetz as the escrow agent, be deposited into the court pending the determination of the parties' claims with respect to these funds; and with respect to Escrow Deposit #2, directing that plaintiff be reimbursed for sums he paid to the Workers' Compensation Board; that the plaintiff be reimbursed for the balance of the sum to be paid to the Workers' Compensation Board; that a determination be made as to the amount of reasonable attorney's fees to be paid on defendant's behalf relative to this dispute and the escrow funds, to be paid out of said funds; releasing the remainder of said funds to defendant Persaud; discharging defendant Nimetz as escrow agent; and discontinuing the action against the defendants with prejudice.

Papers  
Numbered

Notice of Motion-Affidavit-Exhibits..... EF15-18  
Notice of Cross Motion-Affidavit-Affirmation-Exhibits..... EF21-24

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Upon the foregoing papers the motion and cross motion are determined as follows:

Plaintiff Satrohan Ramnath and defendant Mukesh Persaud were each 50% shareholders of Players Bar & Restaurant, Inc. (Players). Mr. Persaud acted as the President of the corporation, and was in control of its business operations since it was formed. Mr. Ramnath, a Florida resident, did not participate in the daily onsite operation of the corporation. Mr. Ramanth and Mr. Persaud are the lessees of the premises known as 129-06 Liberty Avenue, Richmond Hill, New York, and Players operates a bar and restaurant at said premises. Mr. Ramanth commenced several prior actions against Mr. Persaud in this court in connection with said corporation, including an action for dissolution. All of the prior actions have been discontinued pursuant to the terms of an Agreement of Sale dated August 21, 2014, whereby Mr. Ramnath agreed to purchase all of Mr. Persaud's shares in the corporation for the sum of \$160,000.00. Mr. Persaud also agreed to assign his interest in the lease to Mr. Ramnath.

Mr. Ramnath and Mr. Persaud were both represented by counsel in the prior proceedings, and in the negotiation of the Agreement of Sale. Everett N. Nemitz represented Mr. Persaud, and the Agreement of Sale named him as the escrow agent and provided that he could continue to represent Mr. Persaud. With respect to the payment of the purchase price, the Agreement of Sale provided that the sum of \$40,000.00 would be held in escrow, designated as Escrow Deposit #1, pursuant to the provisions set forth in subparagraphs (d), (e), (f) and (g). An additional sum of \$40,000.00 would be held in escrow, designated as Escrow Deposit #2, "as 'security' for the payment of the \$40,000.00 workers' compensation claim/lien identified in Exhibit B hereto (file date 11/13/2013 for identification only).", pursuant to the terms set forth in paragraph (h). The remaining sum of \$80, 000.00 was paid to the purchaser, Mr. Ramnath.

Paragraph 3 of the Agreement of Sale pertains to the amounts held in Escrow Deposit #1 and Escrow Deposit #2 and provides, in pertinent part, as follows:

“(e) In the event Purchaser shall become aware of any debt or obligation incurred by or on behalf of Players prior to the closing date of the sale of the Seller's shares within six (6) months of the date of the closing of said sale, Purchaser or his attorney shall send written notice to the Escrow Agent to withhold such part of the escrow funds as shall be equal to

said debt or obligation from the Seller and apply same to such debts or obligations incurred by Players prior to the closing date of sale. Upon receipt of said notice the Escrow Agent shall provide notice thereof to the Seller and if the Seller agrees to pay such debt or obligation from the escrow funds, the Escrow Agent is hereby authorized to and shall promptly make payment thereof. In the event the Seller disputes such debt or obligation the Escrow Agent shall continue to retain the escrow funds pending resolution of the disputed debt or obligation, whether by agreement of the parties or judicial resolution.”

“(f) At the expiration of said six (6) month period and provided the Escrow Agent shall not have received notice in writing from Purchaser or Purchaser’s attorney to withhold the release of the escrow funds, the Escrow Agent shall release the escrow funds or any balance thereof remaining to Seller.”

“(g) Notwithstanding the foregoing paragraphs, in the event that the pre-closing debt(s) or obligation(s) hereunder exceed the amount of \$40,000.00 (Escrow Deposit #1; i.e. exclusive of Escrow Deposit #2 held for the workers’ compensation debt/lien/judgment), the parties agree that the Seller shall be liable for and pay eighty-five (85%) percent thereof and the Purchaser shall pay fifteen (15%) percent thereof, and the Seller hereby agrees to and does hereby indemnify and hold the Purchaser and Players harmless from any and all such debts and/or obligations incurred by or on behalf of Players prior to the closing of the sale, to extent of eighty-five (85% ) percent of said debt or obligation (over the \$40,000.00 escrow held).”

“(h) Escrow Agent shall hold Escrow Deposit #2 in the sum of \$40,000.00 as security for the payment of the \$40,000.00 workers’ compensation debt/lien/judgment previously described as adjusted, if any. It shall be seller’s obligation to secure a release/satisfaction of this debt/lien/judgment from New York State, and upon written proof of such debt, as adjusted, the escrow agent is authorized, upon written notice to the Purchaser’s attorney, to use the escrow funds (Escrow Deposit #2) to make payment of this debt/lien/judgment. Upon proof of payment and notice to the Purchaser’s attorney, the balance of the funds on deposit (escrow deposit #2 [sic]), if any, shall be released to the Seller by the Escrow Agent. If proof of the release/satisfaction of the debt/lien/judgment is not received by Seller and notice thereof given to Purchaser’s attorney within one (1) year from the date hereof, the escrow agent, upon notice to the Purchaser’s attorney shall make payment of the \$40,000.00 from the escrow funds (escrow deposit #2 [sic]), to the State of New York from the escrowe [sic]”.

Paragraph 13 of the Agreement of Sale, provides in pertinent part, as follows:

“(e) If conflicting demands are made or notices are served upon the Escrow Agent with respect to the Escrow Deposits (#1 and #2), or if the Escrow Agent shall hold a good faith belief that the rights of the claimant to the Escrow Amount are not absolutely clear, the parties hereto agree that the Escrow Agent shall be entitled to refuse to comply with any such claim or demand and to withhold and stop all further action in the performance of this Agreement so long as such disagreement shall continue. In doing so the Escrow Agent shall not be or become liable for damages or interest to either of the parties hereto or to any other person for his failure to comply with such conflicting or adverse demands or notices. The Escrow Agent shall be entitled to continue to so refrain and so refuse to act until (i) the rights of the adverse claimants have been finally adjudicated in a court having and assuming jurisdiction of the parties and/or the Escrow Amount, or (ii) all differences shall have been adjusted by mutual agreement of the parties, and the Escrow Agent shall have been notified in writing signed by both of said parties. In the alternative, the Escrow Agent may, but shall not be obligated to, file a suit in interpleader for declaratory judgment for the purpose of having the respective rights of the claimants adjudicated, and/or may deposit with a court of competent jurisdiction the Escrow Amount hereunder, in which event the Seller and Purchaser, jointly and severally, agree to pay all reasonable costs, expenses and reasonable attorneys’ fees incurred by the Escrow Agent in connection therewith. In the event that the Escrow Agent shall deposit the Escrow Amount with such court, the Escrow Agent shall be fully released and discharged from any and all duties and obligations thereunder.”

The closing of sale of stock took place on August 21, 2014. Following the closing, Mr. Ramnath alleges that he discovered that there were certain outstanding liabilities and obligations of the corporation which existed at the time of the closing which Mr. Persaud had failed to disclose, and that Persaud is responsible for paying those claims. Mr. Ramnath’s counsel, in a series of letters, demanded that Mr. Nimetz, as escrow agent, pay said claims from the \$40,000.00 deposited with him as Escrow Deposit #1. Mr. Persaud, however, instructed Mr. Nimetz not to release said funds.

Plaintiff Ramnath commenced the within action on November 6, 2014, and alleges three causes of action against defendant Persaud for fraud in the inducement with respect to the August 21, 2014 agreement of sale; for breach of contract; and for attorney’s fees. Mr. Nimetz, is named a defendant solely in his status as escrow agent. Plaintiff seeks to recover exemplary and punitive damages of at least \$600,000.00 on the first cause of action; demands that Nimetz release the sum of \$40,000.00, as well as judgment against Persaud in the sum of \$33,367.91 on the second cause of action; and to recover attorney’s fees, in an amount to be determined on the third cause of action.

Defendant Persaud served a verified answer and interposed four affirmative

defenses. Defendant Persaud interposed a counterclaim against the plaintiff, alleging that he had failed to pay adjustment and charges, pursuant to the terms of the parties' agreement, and seeks to recover the sum of at least \$25,000.00, together with attorney's fees and expenses. Defendant Persaud also interposed a second counterclaim against the plaintiff and a cross claim against Nimetz, as escrow agent, and seeks an offset in the amount of \$403.20 with respect to the sum of \$2,069.04 paid by plaintiff to the Workers' Compensation Board; payment to the Workers' Compensation Board in the amount of \$3,940.00; and upon the receipt of a satisfaction of judgment from said Board, the release of the balance of sums held in Escrow Deposit #2 to himself.

Defendant Nimetz served an answer and interposed three affirmative defenses, and counterclaims and cross claims against the plaintiff and Persaud. With respect to the first counterclaim and cross claim, he seeks a judgment directing that the funds held in Escrow Deposit #1 be deposited with the court until the final determination by the court of the proper payee of said funds, the discharge of the escrow agent, and attorney's fees incurred as the escrow agent in connection with this action. With respect to the second counterclaim and cross claim, Mr. Nimetz alleges that Mr. Ramnath has made installment payments to the Workers' Compensation Board, totaling \$2,069.04, leaving a balance of \$3,690.96 on the settled judgment and \$250 in disability benefits penalties. He further asserts that Ramnath is responsible for 7% of the amount owed the Board and seeks to offset the sum of \$403.20 from the installment payments of \$2,069.04 made by Ramnath. He seeks a judgment directing him as the escrow agent to immediately pay the sum of \$3,690.96 to the Workers' Compensation Board, and upon receipt of a satisfaction of the judgment from the Board, to pay Ramnath the sum of \$1,665.84, which represents the installment payments plaintiff made to the Workers' Compensation Board minus the offset of \$403.20; and to pay the remainder of the sums held in Escrow Deposit #2 to Persaud, or pursuant to Persaud's direction to Ramanth and Persaud, upon receipt of a satisfaction of judgment from the Workers' Compensation Board.

Plaintiff has served replies to the counterclaims of defendant Persaud and the counterclaims of defendant Nimetz.

Plaintiff now seeks an order granting summary judgment in his favor, and directing that the \$40,000.00 held in Escrow Deposit #1 be released to him, directing that the \$40,000.00 held in Escrow Deposit #2 be released to him or in the alternative that said sum be retained by Mr. Nimetz pending further order of the court and that said funds not be released to defendant Persaud.

Defendant Nemitz cross moves and seeks summary judgment on his counterclaims and cross claims; directing that the \$40,000.00 in Escrow Deposit #1 he presently holds

as the escrow agent be deposited into the court pending the determination of the parties' claims with respect to these funds; and with respect to Escrow Deposit #2, directing that plaintiff be reimbursed for sums he paid to the Workers' Compensation Board and for the balance of the sum to be paid to the Workers' Compensation Board; that a determination be made as to the amount of reasonable attorney's fees to be paid on defendant Nimitz' behalf relative to this dispute; releasing the remainder of said funds to defendant Persaud; discharging defendant Nimetz as escrow agent; and discontinuing the action against this defendant with prejudice.

In order to obtain summary judgment, the movant must establish its cause of action or defense sufficiently to warrant a court's directing judgment in its favor as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; CPLR 3212 [b]). "Where the moving party has established prima facie that it is entitled to summary judgment, the party opposing the motion must demonstrate the existence of a factual issue requiring a trial of the action by admissible evidence, not mere conjecture, suspicion, or speculation" (*Fotiatis v Cambridge Hall Tenants Corp.*, 70 AD3d 631, 632[2d Dept 2010]). The parties' competing contentions are viewed in the light most favorable to the party opposing the motion (*Marine Midland Bank, N.A. v Dino & Artie's Automatic Transmission Co.*, 168 AD2d 610 [2d Dept 1990]).

Generally, in a claim for fraudulent misrepresentation, a plaintiff must allege "a misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury" (*Lama Holding Co. v Smith Barney Inc.*, 88 NY2d 413, 421[1996]; see also *Mandarin Trading Ltd. v. Wildenstein*, 16 NY3d 173, 178 [2011]; *Channel Master Corp. v Aluminum Ltd. Sales*, 4 NY2d 403, 406-407 [1958]). Furthermore, where a cause of action is based in fraud, "the circumstances constituting the wrong shall be stated in detail" (see CPLR 3016 [b]; see also *Mandarin Trading Ltd. v. Wildenstein*, 16 NY3d at 178; *Lanzi v Brooks*, 43 NY2d 778, 780 [1977]).

Here, plaintiff in the first cause of action of the amended complaint sets forth certain portions of paragraph 6 of the Agreement of Sale entitled "Representations and Warranties of Seller" and certain portions of paragraph 10 of the Agreement of Sale entitled "Indemnification". It is alleged that these contractual provisions were material and necessary to the plaintiff; that these representations by Persaud were false and untrue at the time they were made; that Persaud made these representations in order to deceive the plaintiff and to induce him into entering the Agreement of Sale; that the plaintiff relied upon these representations; and that he sustained damages "in an amount presently

unknown but believed to be in excess of \$600,000". Plaintiff also alleges that Persaud's fraud and misrepresentations were "so wanton in their dishonesty as to reflect a high degree of moral turpitude and demonstrated and [sic] implied criminal indifference to civil obligations so as to warrant the imposition of exemplary and punitive damages against him in favor of the plaintiff". The Court notes, however, that the amended complaint fails to state in detail the circumstances constituting the alleged fraud.

Plaintiff, in his affidavit submitted in support of the within motion, has combined his claims for fraud and breach of contract, rather than establishing the elements of each claim. In view of the complaint's deficiencies, and the manner in which plaintiff seeks to present his claim for fraud, that branch of the motion which seeks summary judgment on the first cause of action for fraud, is denied.

With respect to the second cause of action for breach of contract, plaintiff alleges in the amended complaint that on August 24, 2014, his counsel sent a letter to Mr. Nimetz with proof of his payment of the bills incurred by Persaud while he was operating Players in the sums of \$5,000 paid to Con Edison and \$1,379.96 paid to National Grid, for which he sought reimbursement; that on August 25, 2014 his counsel sent a letter to Mr. Nimetz demanding payment from the escrow funds for payments made to the New York City Department of Health in the sums of \$14,595 and \$1,840 for violations issued to Players prior to August 21, 2014; that on September 2, 2014, his counsel sent defendants a letter containing a summons from Wha Ke Supplies Inc., in the sum of \$4,469, and a notice of failure to file Second Quarter Unemployment Insurance Tax of \$15,150, as well as copies of violations issued against Players while it was operated by Persaud; that on September 26, 2014 plaintiff's counsel forwarded a letter containing proof of payment to Oath Health Tribunal for \$950 and payment to New York State for \$4,907.03 for liabilities incurred by Players while it was operated by Persaud; that on November 3, 2014 plaintiff's counsel forwarded to defendants a letter containing copies of correspondence from the NYC Environmental Control Board for \$2,500 for alterations made without a valid certificate of occupancy which Persaud could have resolved had he paid \$530 by December 18, 2013, but failed to do so, and also included a copy of check for \$3,465 for sales tax for the period of September -November 2013, a demand for sales and corporate taxes of \$22,020.91, and a water bill for \$2,979.47; that on January 21, 2015, plaintiff's counsel forwarded to the defendants a demand for payment of \$8000, reflecting payment made by plaintiff in said sum to the State Liquor Authority for violations filed against Players prior to August 21, 2014, as well as notice of an additional charge by the State Liquor Authority which had yet to be adjudicated. Plaintiff alleges that despite demand Nimetz failed to pay the sum of \$40,000 from the escrow account to the plaintiff, and that defendant Persaud failed to pay 85% of the balance in excess of \$40,000.

When dealing with issues of contract interpretation, courts must construe the agreement according to the parties' intent, and the best evidence of what parties to a written agreement intended is what was said in the writing (*see e.g., Slatt v Slatt*, 64 NY2d 966, 966, [1985]). Courts may not fashion a new contract for the parties under the guise of interpreting the writing (*see, e.g., Tonking v Port. Auth. of NY & N.J.*, 3 NY3d 486, 490 [2004] [(holding that a court may not "rewrite the contract and supply a specific obligation the parties themselves did not spell out")]). The courts also determine, as a matter of law, whether ambiguity exists by examining the agreement as a whole (*see Kass v Kass*, 91 NY2d 554, 566 [1998]); *Nappy v Nappy*, 40 AD3d 825, 826 [2d Dept 2007]). An agreement is ambiguous where it is, on its face, susceptible to two or more interpretations (*see Nappy*, 40 AD3d at 826). Where a contract is straightforward and unambiguous, it must be enforced according to its terms.

Here, the terms governing Escrow Deposit #1 and #2 set forth in the Agreement of Sale do not address the issue of reimbursement in the event that the purchaser or seller, rather than the escrow agent, made a payment to a creditor. In the absence of any contractual provision for reimbursement, plaintiff may not maintain a claim for breach of contract based upon a failure to reimburse him out of the escrow funds. Therefore, that branch of plaintiff's motion which seeks summary judgment on the second cause of action for breach based upon the failure to reimburse him, is denied.

To the extent that plaintiff seeks reimbursement, and also asserts that he has made additional payments to various creditors of Players, it is noted that the amended complaint does not assert a claim for unjust enrichment, and plaintiff has not served a second amended complaint.

To the extent that plaintiff asserts that the defendants' failed to pay the water bill, the documentary evidence is insufficient to warrant the granting of summary judgment. The copy of the water bill submitted herein was not issued to Players. Although plaintiff alleges that under the terms of the lease, Players was responsible for water usage, plaintiff has not submitted a copy of the lease. Plaintiff, thus, has not established that Players was the named tenant or that it had any obligation to pay the landlord's water bill.

That branch of plaintiff's motion which seeks the release of the funds held in Escrow Deposit #2 to himself, is denied. The amended complaint does not assert any cause of action with respect to Escrow Deposit #2. Moreover, "[i]t is well settled that, in the event of a dispute, the escrow funds may not be released until the conditions of the escrow agreement are fully performed and it is 'clear that no factual issues or viable claims exist under the closely scrutinized terms of the escrow agreement' " (*Takayama v*

*Schaefer*, 240 AD2d 21, 25-26 [2d Dept 1998], quoting *E.S.P. Adj. Servs. v Asta Group*, 125 AD2d 849, 850 [3d Dept 1986]; see *Matter of Kaplan v Shaffer*, 112 AD2d 369[2d Dept 1985]). In a dispute between the buyer and the seller over escrow funds, the escrow agent is a proper party, “so that he [or she] will be amenable to any judgment rendered after trial with respect to the disposition of the escrow funds” (*Zwirn v Goodman*, 206 AD2d 360, 362 [2d Dept 1994]; *Takayama v Schaefer*, 240 AD2d at 25-26). Although the remedy of interpleader is available to an escrow agent, the escrow agent may retain money and “compel proof of a clear right to the stake” (*Falk v Goodman*, 7 NY2d 87, 91 [1959]).

Here, the terms of the Agreement of Sale regarding the disposition of funds held in Escrow Deposits #1 and #2 are clear and unambiguous. The \$40,000.00 in Escrow Deposit #1 is to be held by the escrow agent in order to pay any unpaid debts or obligations of the Players that were incurred prior to the closing, for which claims were made within six months of the closing date, August 21, 2014. In the event that the corporation’s pre-closing debts and obligations exceeded the \$40,000.00 held in Escrow Deposit #1, the parties agreed that those debts and obligations would be paid, according to a formula, whereby the seller, Persaud, would pay 85% of such debts and obligations, and the purchaser, Ramnath, would pay 15% of such debts and obligations. The Workers’ Compensation Board debt was expressly excluded from said formula.

The \$40,000.00 in Escrow Deposit #2 is to be held by the escrow agent for a year from the date of closing in order to satisfy a claim/judgment of the Workers’ Compensation Board that had been previously served upon Persaud, and was disputed. If the Workers’ Compensation Board claim/judgment was negotiated and settled prior to August 21, 2015, for an amount less than the Board’s original claim of \$40,000.00, the settlement amount was to be paid to the Board from the sums held in Escrow Deposit #2, with the balance of the remaining sum to be released to the seller, Persaud. The funds held in Escrow Deposit #2, thus, were expressly earmarked for the payment of the Workers’ Compensation Board claim. The terms of the parties’ agreement do not permit the release of any funds in excess of the Workers’ Compensation Board’s claim/judgment to anyone other than the seller Mr. Persaud.

Defendant Nimetz in his answer has interposed cross claims and counterclaims against Ramnath and Persaud and seeks to deposit with the court the funds held in Escrow Deposit #1 and Escrow Deposit #2. Turning now to defendant Nimetz’ cross motion, it is clear that a dispute exists between Ramnath and Persaud as to certain payments owed creditors, impacting the funds held in Escrow Deposit #1. Therefore, that branch of the Nimetz cross motion which seeks summary judgment on the first counterclaim and cross claim is granted to the extent that the \$40,000 presently held in Escrow Deposit #1 shall

be paid into the court.

With respect to Escrow Deposit #2, the documentary evidence submitted herein establishes that the Workers' Compensation Board judgment and penalties was reduced to the sum of \$5,760.00, and that payments were made totaling \$4,655.34, leaving a balance of \$1,104.66. In addition, the disability benefits penalties were reduced to \$250.00. It is undisputed that all prior payments to the Workers Compensation Board were made by Mr. Ramnath, rather than by the escrow agent. Therefore, Mr. Nimetz, as escrow agent is directed to pay the sum of \$1,104.66 to the Workers' Compensation Board and to pay the sum of \$250.00 to the Workers' Compensation Board, from the funds held in Escrow Deposit #2. Upon proof of satisfaction of said judgment, Mr. Nimetz may deposit the remainder of the funds held in Escrow Deposit #2 into this court, at which time defendant Persaud may make an application for the release of the balance of Escrow Deposit #2.

That branch of the cross motion which seeks to reimburse Mr. Ramnath for payments made to the Workers' Compensation Board, minus an offset of \$403.20, from Escrow Deposit #2, is denied. As stated above, the Agreement of Sale does not permit the escrow agent to reimburse either the purchaser or seller out of the funds held in Escrow Deposit #2.

That branch of the cross motion which seeks attorney's fees, is denied. The affidavit submitted by Mr. Nimetz' counsel is insufficient as it fails to properly set forth the exact legal services rendered and hours expended for the work described, along with the hourly rate. Furthermore, as the Agreement of Sale makes no provision for the payment of attorney's fee out of the escrow deposits, the funds held in these deposits may not be utilized for that purpose.

That branch of the cross motion which seeks to discontinue the actions against him and to be discharged as the escrow agent is denied with leave to renew upon proof that the Mr. Nimetz has paid all amounts due the Workers' Compensation Board.

Accordingly, plaintiff's motion for summary judgment is denied in its entirety, and defendant Nimetz's cross motion is granted in part and denied in part, as stated above.

Dated: 10/8/15

  
 VALERIE BRATHWAITE NELSON, J.S.C.

FILED  
 OCT 27 2015  
 COUNTY CLERK  
 QUEENS COUNTY