

**Commissioners of the State Ins. Fund v Range
Contrs. Corp.**

2022 NY Slip Op 30106(U)

January 14, 2022

Supreme Court, New York County

Docket Number: Index No. 452273/2018

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

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COMMISSIONERS OF THE STATE INSURANCE FUND,

Plaintiff,

- v -

RANGE CONTRACTORS CORP.,

Defendant.

-----X

INDEX NO. 452273/2018

MOTION DATE 09/22/2021

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

were read on this motion to/for SUMMARY JUDGMENT.

Upon the foregoing documents, it is ordered that

Plaintiff's motion for summary judgment pursuant to CPLR 3212 is granted without opposition based upon the following memorandum decision.

Background

In this action to recover unpaid insurance premiums, plaintiff Commissioners of the State Insurance Fund ("plaintiff") moves for summary judgment against defendant Range Contractors Corp. ("defendant").

Plaintiff is a New York state agency created and authorized pursuant to the Worker's Compensation Law to issue worker's compensation and disability insurance policies (NYSCEF Doc. No. 35, ¶ 3). On April 28, 2016, defendant applied to plaintiff for, and plaintiff issued to defendant, a Worker's Compensation and Employer's Liability Insurance Policy (NYSCEF Doc. No. 35, ¶¶ 4-7; NYSCEF Doc. Nos. 37, 38). Defendant maintained the policy on an annual basis from May 5, 2016 through May 4, 2018, at which time defendant elected not to renew the policy (NYSCEF Doc. No. 35, ¶¶ 7-8). Pursuant to the terms of the policy, plaintiff charged defendant

an annual premium based on a calculation set forth in the policy and the expected amount of defendant's payroll for the policy term, with an initial payment of 25% of the premium and the remainder payable in installments, as well as certain ancillary charges (NYSCEF Doc. No. 35, ¶¶ 9-11; NYSCEF Doc. Nos. 37 at 4-5). At the end of each policy term, plaintiff audited defendant's books and records to determine the actual amount of defendant's payroll, and credited or billed defendant as necessary based on the amount defendant had previously paid (NYSCEF Doc. No. 35, ¶ 10). Pursuant to a Statement of Account prepared by plaintiff, there is a currently outstanding balance of \$87,398.14 on defendant's account (NYSCEF Doc. No. 39). This amount reflects audits conducted of defendant's books and records following the end of each term of the policy, the details of which are set forth in the audit records attached to the motion papers (NYSCEF Doc. No. 35, ¶¶ 12-13, 20-25; NYSCEF Doc. Nos. 40-42).

Plaintiff commenced this action by filing a summons and complaint on December 3, 2018 (NYSCEF Doc. No. 1). Defendant appeared and answered on February 1, 2019 (NYSCEF Doc. No. 6). Pursuant to a decision and order of this court dated December 22, 2020, plaintiff filed an amended complaint (*see*, NYSCEF Doc. No. 28). Defendant filed an amended answer on February 9, 2021 (NYSCEF Dec. No. 31). Plaintiff filed its note of issue thereafter on July 29, 2021, certifying that all discovery was complete (NYSCEF Doc. No. 33). Plaintiff now moves, pursuant to CPLR 3212, for summary judgment. There is no opposition to the motion.

Standard of Review

Summary judgment is appropriate where there are no disputed material facts (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). The moving party must tender sufficient evidentiary proof to warrant judgment as a matter of law (*Zuckerman v City of N.Y.*, 49 NY2d 557, 562 [1980]). The opposing party must proffer its own evidence to show disputed material facts requiring a

trial (*id.*). However, the reviewing court should accept the opposing party's evidence as true (*Hotopp Assocs., Ltd. v Victoria's Secret Stores, Inc.*, 256 AD2d 285, 286-287 [1st Dept 1998]), and give the opposing party the benefit of all reasonable inferences (*Negri v Stop & Shop*, 65 NY2d 625, 626 [1985]). Where a motion for summary judgment is unopposed, the movant must nevertheless demonstrate its entitlement to judgment as a matter of law (*Exit Empire Realty v Zilelian*, 137 AD3d 742, 743 [2d Dept 2016] [holding that “Supreme Court . . . properly denied the plaintiff's unopposed motion for summary judgment” where the plaintiff failed to establish a *prima facie* case]).

Discussion

Plaintiff alleges two causes of action arising out of defendant's failure to pay the outstanding premium balance: breach of contract and account stated. Plaintiff moves for summary judgment without specifying upon which cause of action it is moving, but generally argues its motion from the perspective of a breach of contract. As the causes of action arise from the same facts and seek the same damages, decision on the breach of contract will necessarily resolve the entire matter.

A cause of action for breach of contract requires allegations of “the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages” (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]). Here, plaintiff has submitted defendant's application for coverage (NYSCEF Doc. No. 38), the policy (NYSCEF Doc. No. 37), the affidavit of its underwriter, Tessa Shanley, attesting that plaintiff provided coverage under the policy (NYSCEF Doc. No. 35, ¶¶ 4-7), a Statement of Account, premium records, and audit statements demonstrating both defendant's breach of its obligation to pay premiums and the total outstanding balance of \$87,398.14 (NYSCEF Doc. Nos. 39-42).

