

**Commissioners of the State Ins. Fund v Bravura Glass
& Mirror Corp.**

2023 NY Slip Op 32267(U)

July 6, 2023

Supreme Court, New York County

Docket Number: Index No. 452296/2020

Judge: Frank P. Nervo

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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. FRANK P. NERVO PART 04

Justice

-----X

COMMISSIONERS OF THE STATE INSURANCE FUND

Plaintiff,

- v -

BRAVURA GLASS & MIRROR CORP.,

Defendant.

-----X

INDEX NO. 452296/2020

MOTION DATE 07/06/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55

were read on this motion to/for JUDGMENT - SUMMARY.

This matter was recently transferred to Part IV. Prior to the transfer, oral argument had been scheduled. This Court has reviewed the papers on this fully briefed motion, and finds oral argument unnecessary. Accordingly, the parties' request to adjourn argument is gratuitous and the Court deems the motion fully submitted. This decision and order results.

Plaintiff moves for summary judgment on its claim that defendant failed to pay the requisite premiums for worker's compensation insurance coverage provided by plaintiff. Defendant opposes contending that, inter alia, discovery remains outstanding, the plaintiff's proof is insufficient to meet their

burden, and that plaintiff has incorrectly estimated payroll figures in calculating defendant's insurance premium.

The standard by which the Court evaluates the instant motion is well-established. On a motion for summary judgment, the burden rests with the moving party to make a prima facie showing they are entitled to judgment as a matter of law and demonstrate the absence of any material issues of fact (*Friends of Thayer Lake, LLC v. Brown*, 27 NY3d 1039 [2016]). Once met, the burden shifts to the opposing party to submit admissible evidence to create a question of fact requiring trial (*Kershaw v. Hospital for Special Surgery*, 114 AD3d 75 [1st Dept 2013]). "When a plaintiff moves for summary judgment, it is proper for the court to ... deny summary judgment if facts are alleged in opposition to the motion which, if true, constitute a meritorious defense" (*Nassau Trust Co. v. Montrose Concrete Products Corp.*, 56 NY2d 175 [1982]).

Here, plaintiff's submissions establish a prima facie case and its entitlement to summary judgment, as a matter of law (*Commissioners of State Ins. Fund v. Allou Distribs.*, 220 AD2d 217 [1st Dept 1995]). Notwithstanding that plaintiff's submissions are based, in part, on estimated payroll figures due to discrepancies in defendant's bookkeeping records – including substantially

lower payroll costs than would be expected for the revenue generated by defendant and large unexplained transfers of funds – summary judgment is not precluded by plaintiff’s estimates. Plaintiff has repeatedly demanded discovery related to these payroll records and funds; however, it is undisputed that defendant has not responded to same. Despite failing to respond to plaintiff’s demands, defendant now contends that summary judgment is premature due to this same outstanding discovery. It is beyond cavil that where a party controls the discovery claimed to be outstanding, summary judgment is not premature. “A party contending that a motion for summary judgment is premature is required to demonstrate . . . that the facts essential to oppose the motion are exclusively within the knowledge and control of the movant” (*Reynolds v. Avon Grove Props.*, 129 AD3d 932 [2d Dept 2015]). Put simply, defendant cannot now be heard to complain that the discovery it has withheld bars summary judgment.

Defendant’s remaining contentions, including statute of limitations arguments, are without merit and defendant has failed to raise a triable issue of fact precluding summary judgment.

Accordingly, it is

ORDERED that the motion is granted; and it is further

ORDERED, DECLARED, and ADJUDED that plaintiff

COMMISSIONERS OF THE STATE INSURANCE FUND, 199 Church Street 14th Floor New York, NY 10007, shall have judgment as against defendant BRAVURA GLASS & MIRROR CORP., 2894 West 8 Street # 10B Brooklyn, NY 11224, in the amount of \$223,937.18 together with interest at the statutory rate from April 28, 2019 and costs, as taxed by the Clerk of the Court; and it is further

ORDERED that judgment shall be submitted to the Clerk of the Court, and not to chambers or the Part, unless directed otherwise by that office.

THIS CONSTITUTES THE DECISION, ORDER, AND JUDGMENT OF THE COURT.

7/6/2023
DATE

CHECK ONE:

| | | | |
|-------------------------------------|---------------|--------------------------|--------|
| <input checked="" type="checkbox"/> | CASE DISPOSED | <input type="checkbox"/> | DENIED |
| <input checked="" type="checkbox"/> | GRANTED | | |

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE



HON. FRANK P. NERVO

J.S.C.