

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**ADVENTIST HEALTH SYSTEM
SUNBELT HEALTHCARE
CORPORATION,**

Plaintiff,

v.

Case No: 6:20-cv-877-PGB-DCI

**TOMAX CAPITAL
MANAGEMENT, INC. and
YEHORAM TOM EFRATI,**

Defendants.

_____ /

ORDER

This cause comes before the Court without oral argument on Defendants Yehoram Tom Efrati and Tomax Capital Management, Inc.'s, Motion for Partial Summary Judgment (Doc. 34 (the "**Motion**"), Plaintiff's Response in Opposition (Doc. 36), and Defendants' Reply (Doc. 39). Plaintiff also filed a Motion to Deny or Defer Ruling on the Motion (Doc. 35), and Defendants responded in opposition (Doc. 40). Upon consideration, Defendant's Motion is due to be denied as premature.

This action arose when AdventHealth sought to acquire personal protective equipment for medical workers combatting the ongoing COVID-19 pandemic. (Doc. 19, ¶ 12). Tomax represented to AdventHealth that it could supply 3M N95 1860 ventilator masks ("**N95 Masks**"), which Tomax could arrange to ship from

its California facility to AdventHealth in Orlando, Florida. (*Id.* ¶ 13). Plaintiff alleges that Tomax failed to deliver the masks and failed to return approximately \$2,000,000 of Plaintiff's Escrow Funds. (*Id.* ¶ 48). The Complaint alleges several causes of action against Tomax and its CEO (Defendant Efrati), including breach of contract, conversion, civil conspiracy, and civil theft. (*See generally id.*).

Defendants moved for Summary Judgment on the grounds that Plaintiff cannot produce sufficient evidence to carry its burden at trial. (Doc. 34, p. 1). The Motion is due to be denied as glaringly premature. Summary judgment is not appropriate until the nonmoving party "has had an adequate opportunity for discovery." *Snook v. Tr. Co. of Ga. Bank of Savannah, N.A.*, 859 F.2d 865, 870 (11th Cir. 1988). The Eleventh Circuit has further stated:

The party opposing a motion for summary judgment has a right to challenge the affidavits and other factual materials submitted in support of the motion by conducting sufficient discovery so as to enable him to determine whether he can furnish opposing affidavits. If the documents or other discovery sought would be relevant to the issues presented by the motion for summary judgment, the opposing party should be allowed the opportunity to utilize the discovery process to gain access to the requested materials. Generally summary judgment is inappropriate when the party opposing the motion has been unable to obtain responses to his discovery requests.

Id. (internal citations omitted).

Defendants moved for summary judgment nearly five months before the discovery deadline.¹ Clearly, Plaintiff has not "had an adequate opportunity for discovery." *See Snook*, 859 F.2d at 870.

¹ Defendants filed the Motion on October 13, 2020. (Doc. 34). Discovery did not close until March 1, 2021. (Doc. 26).

Accordingly, it is **ORDERED** and **ADJUDGED** that Plaintiff's Motion to Deny or Defer Ruling on Defendants' Motion for Partial Summary Judgment is **GRANTED**, and Defendants' Motion for Partial Summary Judgment is **DENIED WITHOUT PREJUDICE**.

DONE AND ORDERED in Orlando, Florida on March 5, 2021.



PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties