

**Spear Sports & Wellness LLC v Phoenix Ins. Co.**

2025 NY Slip Op 31156(U)

March 31, 2025

Supreme Court, New York County

Docket Number: Index No. 653491/2022

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14**

*Justice*

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**INDEX NO. 653491/2022**

SPEAR SPORTS AND WELLNESS LLC AND, SPEAR ASSOCIATES PARTNERS, LLC.,

**MOTION DATE 03/28/2025**

Plaintiffs,

**MOTION SEQ. NO. 001**

- v -

THE PHOENIX INSURANCE COMPANY,

**DECISION + ORDER ON MOTION**

Defendant.

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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

were read on this motion to/for STRIKE PLEADINGS.

Defendant’s motion to strike the complaint based on plaintiffs’ failure to produce discovery is granted.<sup>1</sup>

**Background**

In this insurance dispute, plaintiffs seek an order directing defendant to pay out a claim arising out of damage that took place in a property leased by plaintiffs in September 2021.

Defendant makes this motion to strike on the ground that plaintiffs have not yet responded to combined demands served on *May 16, 2023*. It details how it reached out to plaintiffs on October 12, 2023, October 20, 2023, January 26, 2024, March 25, 2024, April 17, 2024, May 3, 2024, May 14, 2024 and May 23, 2024 to get responses to no avail.

<sup>1</sup> The Court observes that plaintiffs requested an oral argument on this motion. While this Court typically grants those requests, the letter did not state a reason for why oral argument was sought. Moreover, the papers presented on this motion make quite clear the issues in dispute and the Court declines to delay this case any further.

Defendant points out that this Court held a preliminary conference on November 12, 2024 after which this Court ordered that plaintiffs respond by December 27, 2024. It contends that plaintiffs ignored this order and did not produce the requested discovery. In anticipation of the next conference, the parties uploaded a proposed stipulation that gave plaintiffs another 45 days (to February 27, 2025) to respond. The Court rejected that proposal and ordered that the prior deadlines be followed (NYSCEF Doc. No. 10).

Defendant now brings this motion, dated February 25, 2025, to strike on the ground that plaintiffs have still not turned over the responses.

In opposition, plaintiffs admit that they have still not responded. Counsel for plaintiffs contends that “I am swamped with work and have not been able to marshal the documents I need to respond to defendant’s demands or to actually compose my responses. I am not unique in this dilemma. Obviously, other New York attorneys are also overburdened with work. That is, in part, why most cases in Manhattan have to have numerous compliance and status conferences during the life of the litigation. Court ordered discovery deadlines are often extended and enlarged because the lawyers working on the cases have not been able to meet them due to the press of all the work they have. The delay and failure to abide by the Court’s directive[s] are not intentional and are in no way contumacious” (NYSCEF Doc. No. 24, ¶ 3). Counsel for plaintiffs asks for another 45 days “since I have already started working on my responses” (*id.* ¶ 4). Plaintiffs insist that there is no prejudice to defendant.

In reply, defendant emphasizes that plaintiffs do not dispute that they have failed to respond to outstanding discovery demands for nearly two years and have not cited a reasonable excuse. It claims that there is prejudice in that depositions must be completed by April 11, 2025 and it has not received a single document from plaintiffs.

## Discussion

The Court grants the motion to strike the complaint. The fact is that defendant met its burden to show that plaintiffs' refusal to respond to discovery requests that have now been pending for nearly two years is both willful and contumacious. "Willful and contumacious conduct can be inferred from [a party's] repeated failure to timely comply with multiple directives that they 'respond to' or 'comply with' [ ] notices for discovery and inspection, and [the parties] did not articulate any persuasive reason for failing to obey those directives in the first instance" (*Lane v City of New York*, 210 AD3d 502, 503, 179 NYS3d 11 [1st Dept 2022]).

Here, defendant showed that it sent at least 8 good faith letters prior to the preliminary conference about the outstanding discovery and that this Court directed plaintiffs on two occasions to respond to this demand. And yet, despite all of defendant's efforts to obtain this routine and basic discovery, plaintiffs seem wholly uninterested in moving this case. Plaintiffs did not even attempt to cite a reasonable excuse for their failure to comply with multiple court orders and countless requests from defendant. They did not, for instance, claim that they are having trouble locating the documents or witnesses to help find the relevant information.

Instead, plaintiffs' counsel merely suggests that "he's too busy" to work on this case. Certainly, when attorneys are overwhelmed, this Court has often granted extensions of deadlines. But in each of those situations, the attorney has provided specific examples of why they are unable to comply with a discovery deadline. Sometimes the attorney is on a complicated trial in a different matter or is facing health issues. Here, plaintiffs' counsel asks this Court to condone the fact that he is apparently incapable of responding to a discovery request for nearly two years without bothering to justify that extension request.

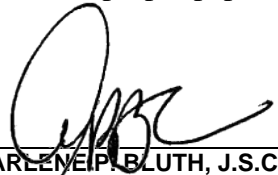
If the Court were to grant plaintiffs' request for another 45 days, then it would send the message that Court deadlines can be indefinitely extended for no reason, which would render them functionally meaningless. The Court observes that in its January 16, 2025 order rejecting a proposed extension of the relevant deadline, plaintiffs wanted until February 27, 2025 to respond. As of the date of plaintiffs' opposition (dated March 21, 2025), they have *still not responded*. In other words, plaintiffs ignored their own suggested extension deadline and now want even more time. Plus, as noted in that prior Court order, depositions were to take place by April 11, 2025. Obviously, defendant does not want to be forced to take a deposition without first receiving discovery. So, in practice, plaintiffs are seeking to adjourn all deadlines in this case until they feel like finally paying attention to a case they commenced two and half years ago.

And, finally, the Court observes that plaintiffs "made no effort to obtain an additional extension of time by seeking judicial relief" (*M13 & M15 Holdings, LLC v Athanson*, 231 AD3d 579, 580, 219 NYS3d 41 [1st Dept 2024] [affirming discovery penalties for the failure to respond to discovery despite multiple Court orders]). That is, plaintiffs did not make a motion for an extension of time—rather, they did nothing and forced defendant to make a motion. Under these circumstances, the Court has little choice but to strike the complaint.

Accordingly, it is hereby

ORDERED that defendant’s motion to strike the complaint is granted, the complaint is dismissed, and the Clerk is directed to enter judgment accordingly in favor of defendant and against plaintiffs along with costs and disbursements upon presentation of proper papers therefor.

3/31/2025  
DATE

  
ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE