

**Whitestone Plaza Assoc., Inc. v Seneca Ins. Co.**

2025 NY Slip Op 31929(U)

May 22, 2025

Supreme Court, New York County

Docket Number: Index No. 654201/2023

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*

-----X

WHITESTONE PLAZA ASSOCIATES, INC., WHITESTONE  
AUTO CENTER, INC

Plaintiffs,

- v -

SENECA INSURANCE COMPANY, UTICA FIRST  
INSURANCE COMPANY,

Defendants.

-----X

**INDEX NO.** 654201/2023  
**MOTION DATE** 05/14/2025  
**MOTION SEQ. NO.** 002 and 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 49, 50, 51, 52, 53, 54, 55

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE.

Motion sequence numbers 002 and 003 are consolidated for disposition and decided as follows.

**Background**

This is a breach of contract case where plaintiffs seek to collect proceeds under insurance policies issued by defendants Seneca Insurance Company (“Seneca”) and Utica First Insurance Company (“Utica”) for damages to their property that resulted from a windstorm on September 1, 2021. This action was commenced on August 29, 2023. The Court issued a Preliminary Conference Order on November 7, 2024 in which the parties agreed to serve responses to written discovery on or before December 13, 2024 and to complete party depositions on or before March

14, 2025; that stipulation was so-ordered (NYSCEF Doc. No. 20). The Court added to that stipulation an order to update the Court on the status of discovery on or before March 17, 2025 (*id.*). The parties did not update the Court, so the Court assumed discovery had been completed and ordered a note of issue be filed on or before April 4, 2025 (*see* NYSCEF Doc. No. 21). On March 21, 2025, the parties proposed a stipulation with a deadline of March 21, 2025 to complete an inspection of plaintiffs' property, a deadline of April 18, 2025 for Utica to respond to Seneca's outstanding document demands, and a deadline of May 30, 2025 to complete "all depositions" (NYSCEF Doc. No. 23).

The Court declined to sign the proposed stipulation, and plaintiffs filed Motion Sequence 001 ("MS 001") on March 27, 2025 seeking to extend the note of issue deadline (NYSCEF Doc. No. 25). In plaintiffs' affirmation in support of that motion, plaintiffs claimed that the inspection took place on March 21, 2025, and that the parties had exchanged written discovery but still needed to conduct depositions (NYSCEF Doc. No. 27). Plaintiffs then filed a note of issue on April 4, 2025 at NYSCEF Doc. No. 38 which led to the Court declaring MS 001 moot, as the relief sought was to extend the deadline to file the note of issue (*see* NYSCEF Doc. No. 56).

Seneca filed MS 002 on April 11, 2025 (NYSCEF Doc. No. 49). The only relief sought in the motion is for the note of issue to be stricken. Despite not seeking to compel discovery, Seneca claimed that Utica failed to respond to Seneca's discovery demands which were served on April 16, 2024 (NYSCEF Doc. No. 50). Seneca also notes that depositions have not been completed (*id.*). Neither Utica nor plaintiffs opposed.

Utica filed MS 003 on April 24, 2025 seeking to vacate the note of issue and to compel outstanding discovery from both plaintiffs and Seneca (NYSCEF Doc. No. 57). Utica's attorney's affirmation in support of MS 003 does not detail any discovery specifically

outstanding from Seneca, however it states that plaintiffs have not responded to Utica's Supplemental Notice for Discovery and Inspection dated March 21, 2025 (which was clearly just served) (NYSCEF Doc. No. 58). Utica contends that it responded to Seneca's April 2024 Notice for Discovery and Inspection on April 11, 2025, and attached the responses at NYSCEF Doc. No. 68, but agrees that depositions have yet to be completed.

Seneca supports the part of Utica's motion which seeks to vacate the note of issue but opposes the part of Utica's motion to compel discovery from Seneca (NYSCEF Doc. No. 72). Seneca claims that Seneca already responded to all of the demands served upon it by Utica, annexed the responses at NYSCEF Doc. No. 73, and states that Seneca confirmed with Utica's counsel that Utica only seeks further responses from plaintiffs (*id.*). Utica did not put in a reply to Seneca's opposition. Plaintiffs did not oppose any part of Utica's motion.

### **Discussion**

The parties represented in their proposed stipulation that the inspection of plaintiffs' property was outstanding and that Utica owed responses to Seneca's written discovery demands. Then plaintiffs swore that the inspection took place on March 21, 2025 and no one disagrees. Utica swore that it served responses to Seneca on April 11, 2025 and attached a copy of the responses and Seneca did not disagree or complain about the sufficiency of the responses. Utica contended that Seneca owed Utica responses to written discovery requests then Seneca swore that it responded to all of Utica's demands, annexed copies of its responses, and swore that it confirmed with Utica's counsel that it did not owe Utica any more written discovery. Utica did not disagree or contest the sufficiency of the responses.

Therefore, the Court is only aware of two outstanding discovery items. First, Utica claims that plaintiffs have not responded to Utica's written discovery demands dated March 21, 2025 and March 24, 2025, which are attached at NYSCEF Doc. No. 66. Plaintiffs do not contend that they have responded and they did not oppose Utica's right to the items. In fact, plaintiff did not oppose Utica's motion at all. And, clearly, everyone agrees that depositions need to be done.

The Court therefore grants MS 002 and the part of MS 003 which seeks to vacate the note of issue as unopposed and because there is clearly still discovery to be completed.

The Court grants the part of MS 003 in which Utica seeks to compel discovery from plaintiffs. Utica attached the demands it served upon plaintiffs, and plaintiffs did not contend that they served responses.

The Court denies the part of MS 003 where Utica seeks to compel discovery from Seneca, as Seneca swore that it responded to all of Utica's demands, and Utica did not contend otherwise.

Accordingly, it is hereby

ORDERED that MS 002 and the part of MS 003 which seeks to vacate the note of issue are granted as unopposed and because there is clearly still discovery to be completed; and it is further

ORDERED that the part of MS 003 in which Utica seeks to compel discovery from plaintiffs is granted. Plaintiffs shall respond to Utica's outstanding written discovery demands at NYSCEF Doc. No. 66 on or before June 11, 2025; and it is further

ORDERED that the parties shall complete all depositions, both party and non-party, on or before July 16, 2025. The parties suggested that "all depositions" be completed by May 30, 2025 in their latest proposed stipulation, so this should be more than enough time; and it is further

ORDERED that a note of issue be filed on or before August 5, 2025.

5/22/2025

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE