

470 4th Ave. Fee Owner, LLC v Wesco Ins. Co.

2026 NY Slip Op 30400(U)

January 29, 2026

Supreme Court, New York County

Docket Number: Index No. 651184/2020

Judge: Arlene P. Bluth

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

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

470 4TH AVENUE FEE OWNER, LLC,TPH 470 4TH
AVENUE INVESTORS LLC,TRINITY PLACE HOLDINGS
INC.,

Plaintiff,

- v -

WESCO INSURANCE COMPANY, AMTRUST NORTH
AMERICA INC.,

Defendant.

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INDEX NO. 651184/2020

MOTION DATE 01/20/2026

MOTION SEQ. NO. 004 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186

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

The following e-filed documents, listed by NYSCEF document number (Motion 005) 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 229, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264

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

Motion Sequence Numbers 004 and 005 are consolidated for disposition. Defendant Wesco Insurance Company (“Wesco”)’s motion (MS004) to strike the note of issue is denied. Wesco’s motion for “renewed” summary judgment (MS005) is also denied.

Background

This coverage dispute concerns a newly-constructed apartment building in Brooklyn. Plaintiffs purchased the property in 2018 for \$81 million (according to plaintiffs, the property

was purchased by plaintiff Trinity Place Holdings [“Trinity”], which is the parent company of the remaining two plaintiffs).

During various inspections and walk throughs, plaintiffs contend that they discovered issues with the floors and were told that this was caused by the fact that the floors were installed prior to any temperature control in the building. Plaintiffs argue that Trinity negotiated with the seller to repair the damaged floors prior to closing at the seller’s expense. They point to a punch list for the work which shows that about fifty percent of the flooring needed repairs.

Plaintiffs explain that they only learned about the true cause of the damage to the floors well after the closing in May 2018—that air conditioning units in the building were improperly installed and the moisture from these units caused damage to the floors. Plaintiffs soon discovered new damage to the wood floors. They contend they again hired an expert to inspect, and this vendor issued a report on September 21, 2018 finding that the scope of the damage was extensive and from the air conditioning units. Plaintiffs maintain that on September 25, 2018, they notified their insurance broker about the damage and told the broker to notify their insurer, defendant Wesco.

They contend that between October 2018 and January 2019, Wesco demanded a significant amount of information. While waiting for a determination concerning coverage, plaintiffs say they submitted a partial proof of loss which sought coverage totaling over \$6 million in March 2019. Wesco eventually denied coverage in December 2019. Plaintiffs brought this case to seek coverage under the all-risk policy they obtained from Wesco.

Note of Issue

Wesco moves to strike the note of issue filed on June 30, 2025 on the ground that there are non-party depositions outstanding and that the judge previously assigned to this matter was to issue a ruling concerning the disclosure of certain documents that may have been subject to a privilege.

In opposition, plaintiffs detail what they claim is a history of Wesco delaying discovery based on filing a prior motion to dismiss and a prior motion for summary judgment. They stress that, eventually, the judge previously assigned to this matter set a June 30, 2025 note of issue deadline and marked it as a final deadline. They contend that some of the witnesses that Wesco seeks to depose were known to Wesco for many years and that it simply did not timely seek these depositions prior to the Court's deadlines.

In reply, Wesco explains how it believes plaintiffs failed to comply with their discovery obligations. It claims that it needed time to follow up on information discovered at the depositions that were taken and that the corporate witness produced by plaintiffs was not properly prepared and indicated that certain other witnesses might have better knowledge.

The Court denies the motion. Obviously, the discovery disputes discussed in the parties' papers were argued extensively in front of the judge previously assigned to this case. And, unfortunately, that judge failed to issue a decision on this motion prior to her retirement even though the record seems to suggest the parties had oral argument. That leaves this Court in the position of having to issue a decision instead.

The Court's decision to deny the instant motion is based upon the discovery order signed by the prior judge on March 31, 2025 (NYSCEF Doc. No. 140). That order set a deadline of May

16, 2025 to complete the depositions of fact witnesses and set a note of issue deadline of June 30, 2025 (*id.*). The judge added that the note of issue deadline was the “final deadline!!” (*id.*). No other order was issued extending this deadline and plaintiff then filed a note of issue. Now, months and months later, after this motion was reassigned to this part, this Court sees no reason to disturb that clear and concise order. Wesco’s efforts to obtain an extension to complete discovery with the prior judge were not successful and so, in this Court’s view, it would be highly inappropriate for the undersigned to disturb the prior order now.

Moreover, Wesco subsequently made a motion for summary judgment, discussed below, which suggests that the discovery in question was not actually necessary as it did not prevent them from making another dispositive motion. Wesco could have, but did not, seek an interim stay of its time to make a dispositive motion if the discovery was critical to its case. Instead, it made the instant motion via notice of motion and not by order to show cause.

Summary Judgment

Wesco moves for “renewed” summary judgment on the ground that all of the damage commenced before the policy period began. It also claims that coverage exclusions for loss caused by repeated leakage over a period of 14 days as well as faulty workmanship and latent defects support its denial of coverage. Finally, Wesco argues that plaintiff did not meet their obligation to give prompt notice of the loss or damage.

In opposition, plaintiffs argue that this motion violates a court order in which the prior judge required a successive dispositive motion to be made with a showing of sufficient justification and with leave of court. They insist that Wesco ignored that order by not seeking

leave. Plaintiffs also argue that Wesco's prior summary judgment motion was denied and the First Department affirmed that order on the ground that there were multiple issues of fact.

In reply, Wesco contends that it did not make another motion for summary judgment but rather made a motion to renew and so it did not violate the Court's order. It claims that it pointed to deposition testimony from six witnesses who had not been deposed prior to the filing of the prior motion in November 2022. Wesco also claims it submitted seven additional documents to this motion that were not previously included.

The Court denies the motion as Wesco failed to comply with the Court order dated November 1, 2024, which required leave of Court to make another motion for summary judgment. That order stated that "Because Wesco has already filed a motion for summary judgment, a successive dispositive motion by Wesco shall not be permitted absent a showing of sufficient justification and with leave of court" (NYSCEF Doc. No. 110). There is no indication on this record that Wesco ever moved to vacate that order or that it received leave of court to make the instant motion.

To the extent that Wesco attempts to recast its motion as one to renew, that argument is without merit. Wesco did cite the renewal provision of the CPLR in its notice of motion but the memorandum of law contains no mention of that section nor does it discuss the relevant standard for renewal. Nor did Wesco include any analysis of how the newly discovered evidence should change the Court's prior determination. It reads as a successive motion for summary judgment which required leave of court.

And, even if the Court were to consider the motion on the merits as one to renew, the fact is that the First Department's decision affirming the denial of Wesco's prior summary judgment

motion cited many issues of fact that were not resolved as a matter of law in the intervening time period. These include the applicability of the various exclusions, such as the exclusion for latent defects. The First Department found that “With respect to the policy's latent defect exclusion, Wesco's expert noted various problems with the exterior of the PTAC units, which cannot be considered hidden so as to qualify as latent defects” (*470 40th Ave. Fee Owner, LLC v Wesco Ins. Co.*, 243 AD3d 461, 462, 245 NYS3d 54 [1st Dept 2025]).

The First Department also noted that “Wesco also failed to meet its burden as to the applicability of the policy's exclusion for continuous or repeated seepage or leakage of water ... that occurs over a period of 14 days or more because its evidence did not establish a clear timeline of when the PTAC units started and stopped leaking” (*id.*). Wesco's motion addressed these issues by incorporating its arguments from the prior motion (NYSCEF Doc. No. 223). Therefore, there is no reason to grant renewal based upon arguments previously raised and rejected.

The same analysis applies to Wesco's claim that plaintiffs did not provide proper notice as the First Department concluded that “plaintiffs raised an issue of fact as to whether they provided Wesco with prompt notice of their claim through their corporate representative, who stated in both his examination under oath and his affidavit that the damage caused by the PTAC units did not occur until August or September 2018, and that plaintiffs provided notice to Wesco on September 25, 2018” (*id.* at 462-63). Wesco did not sufficiently explain what new evidence emerged in order to grant renewal.

And, finally, Wesco's assertion that the damage happened prior to the policy's effective date remains an issue of fact. The First Department noted that “With regard to Wesco's claim that the alleged damages commenced prior to the policy's effective date, plaintiffs raised issues of

fact as to when the damage to the building's floors, appliances, cabinetry, drywall, and other property started by submitting their representative's affidavit and emails from tenants attesting to when the water damage occurred” (*id.* at 461).

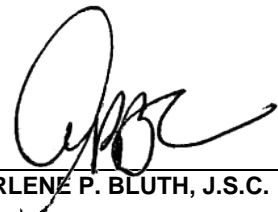
Summary

The Court recognizes that, according to the papers, the prior judge may have made certain oral representations during discovery conferences. Unfortunately, this Court can only proceed based on the signed, written orders. It is not appropriate or proper to base conclusions on recollections of oral statements that may have been made. Here, the Court was guided by the signed order from March 2025 that set a final note of issue deadline and the November 2024 order that barred a successive motion for summary judgment without leave of court. And, of course, the decision of the First Department.

Accordingly, it is hereby

ORDERED that defendant Wesco Insurance Company’s motion to strike the note of issue (MS004) and its “renewed” motion for summary judgment (MS005) are both denied.

1/29/2026
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
 REFERENCE