

Seneca Ins. Co., Inc. v Weishaus

2020 NY Slip Op 33283(U)

October 6, 2020

Supreme Court, New York County

Docket Number: 154528/2018

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 IAS MOTION 14

Justice

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INDEX NO. 154528/2018

SENECA INSURANCE COMPANY, INC,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

CORINNE WEISHAUS, CHRISTIAN VARGAS,

DECISION + ORDER ON MOTION

Defendant.

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CORINNE WEISHAUS

Third-Party
Index No. 565722/2019

Plaintiff,

-against-

A LOGAN INSURANCE BROKERAGE, INC., ALIBI
HOLDINGS, INC., SCOTT HANDWERGER, RONALD
HANDWERGER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 28, 29, 30, 31, 32,
33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 46, 47, 48, 49, 50, 51, 52, 53, 55, 56, 57, 58, 59

were read on this motion to/for DISCONTINUE.

The motion by plaintiff and defendant Weishaus to discontinue this case is granted. The
cross-motion by third-party defendants to dismiss the third-party complaint without prejudice is
granted. The cross-motion by defendant Vargas for leave to amend its answer and to compel
discovery is denied.

Background

This declaratory judgment action relates to an underlying personal injury action in the
Bronx filed by defendant Vargas against defendant Weishaus. He claims that he was injured after

falling on the sidewalk at premises owned by defendant Weishaus in March 2014. Plaintiff brought this case seeking a declaration that it need not provide coverage to Weishaus in Vargas' lawsuit based on an alleged breach of the timely notice conditions under plaintiff's policy issued to Weishaus.

Plaintiff claims that defendant Weishaus successfully moved for summary judgment dismissing Vargas' claims against her and, therefore, there is no reason to keep this action active. It points out that a new action can be filed if Vargas wins an appeal reversing that summary judgment decision. Plaintiff insists it was compelled to make this motion because defendant Vargas refused to agree to the discontinuance.

The third-party defendants agree to the discontinuance and cross-move to dismiss the third-party complaint. They point out that only plaintiff and Weishaus have asserted claims in this case and these claims are now moot.

In opposition to Vargas' cross-motion, Weishaus expresses concerns about potential statute of limitations issues with some of her claims. She objects to the court-ordered discontinuance of the third-party action if third party defendants do not execute a tolling agreement. The third-party defendants point out in reply that they agreed to execute the tolling agreement.

Defendant Vargas also cross-moves for leave to assert a counterclaim and to compel defendant Weishaus to appear for an EBT. Vargas complains about the judge's decision in the underlying personal injury action and points out that he made a motion to renew and reargue. He also contends that Weishaus has refused to go forward with discovery, including showing up for a deposition and that he has a meritorious appeal.

Weishaus opposes Vargas' cross-motion and asserts that there is no longer a need for a declaratory judgment action now that she successfully won dismissal of Vargas' claims against her.

Plaintiff's Motion and Vargas' Cross-Motion

The Court grants plaintiff's motion and denies Vargas' cross-motion. There is no question that the basis for plaintiff's claims is now moot based on Weishaus' successful summary judgment motion in the underlying personal injury action. Vargas' assertions about why that decision was incorrect and his apparent belief that he will eventually prevail is of no moment. There is no longer a justiciable controversy here—the Court need not consider whether plaintiff must provide coverage to Weishaus because there is no longer any claim against Weishaus that might invoke coverage from plaintiff.

Vargas' counterclaim does not state a cause of action. His demand for declaratory relief that plaintiff must provide coverage is now moot. Similarly, Vargas' purported need for discovery is also moot.

Third-party Defendants' Cross-Motion

The Court grants this cross-motion. Third-party defendants assert that they have executed a tolling agreement and that Weishaus (third-party plaintiff) need not worry about statute of limitations for her claims. Therefore, the Court sees no reason to keep these causes of action.

Accordingly, it is hereby

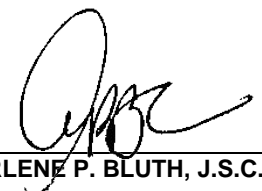
ORDERED that the motion by plaintiff and Weishaus for leave to discontinue this action is granted; and it is further

ORDERED that the cross-motion motion by the third-party defendants to dismiss the third-party complaint without prejudice is granted; and it is further

ORDERED that the cross-motion by defendant Vargas for leave to amend and for discovery is denied.

10/6/2020

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