

**S&S Kings Corp. v Westchester Fire Ins. Co.**

2022 NY Slip Op 33500(U)

October 14, 2022

Supreme Court, New York County

Docket Number: Index No. 650740/2017

Judge: Debra A. James

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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. DEBRA A. JAMES

PART 59

Justice

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S&S KINGS CORP.,

Plaintiff,

- v -

WESTCHESTER FIRE INSURANCE COMPANY,

Defendant.

-----X

INDEX NO. 650740/2017

MOTION DATE 10/14/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

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

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of defendant to vacate the note of issue is granted and the note of issue is vacated and the case is stricken from the trial calendar; and it is further

ORDERED that all further discovery in this matter shall be completed within sixty (60) days from service of a copy of this order with notice of entry; and it is further

ORDERED that the parties shall post on NYSCEF a proposed status conference order or proposed competing status conference orders at least two days before the date set for the discovery status conference in the related case, captioned, S&N Builders, Inc v S&S Kings Corp, 651927/2017i, on which date counsel shall

appear via Microsoft Teams, unless such appearance be waived by the court; and it is further

ORDERED that, within fifteen (15) days from the entry of this order, movant shall serve a copy of this order with notice of entry on all parties and upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is hereby directed to strike the case from the trial calendar and make all required notations thereof in the records of the court; and it is further

ORDERED that, within fifteen (15) days from completion of discovery as hereinabove directed, the plaintiff shall cause the action to be placed upon the trial calendar by the filing of a new note of issue and certificate of readiness (for which no fee shall be imposed), to which shall be attached a copy of this order; and it is further

ORDERED that such filing upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

#### DECISION

It is evident that neither party in this action has complied with the discovery directives (for e.g., depositions on or before June 15, 2020) set forth in this Court's discovery compliance conference order dated March 10, 2020 (five days

before the global pandemic shutdown). (NYSCEF Document No. 12). Thus, as plaintiff filed a materially inaccurate Certificate of Readiness, the Note of Issue shall be vacated pursuant to 22 NYCRR § 202.21(e).

*Debra A. James*  
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<u>10/14/2022</u> DATE			<u>DEBRA A. JAMES, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> GRANTED IN PART
		<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE

An order to consolidate (to consolidate captions or for joint discovery and trial), which states:

ORDERED that the motion is granted and the above-captioned action is consolidated in this Court with \_\_\_\_\_ vs. \_\_\_\_\_, Index No. \_\_\_\_\_, pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. \_\_\_\_\_ and the consolidated action shall bear the following caption:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Plaintiffs,

-against-

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Defendants.

And it is further ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

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ORDERED that service of this order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/suptctmanh](http://www.nycourts.gov/suptctmanh)); and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is hereby directed to reflect the consolidation by appropriately marking the court's records; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the procedures set forth in the aforesaid *Protocol*.

can be issued only upon notice of motion pursuant to CPLR § 602(a), and the parties may stipulate to such relief upon the filing of such motion.