

Matter of Gas Explosion Litig. 1644 &1646 Park Ave.
2021 NY Slip Op 30038(U)
January 8, 2021
Supreme Court, New York County
Docket Number: 780000/15
Judge: Lynn R. Kotler
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 8**

-----X
IN RE: GAS EXPLOSION LITIGATION 1644 AND 1646 :
PARK AVENUE :

DECISION/ORDER

INDEX No.: 780000/15

-----X
This Document Relates To:

- | | | | | |
|-----|--------------------------------------------------------------------------------------------------------------------------|---|------------|-----------|
| 1. | Monserrat Arias-Amacosta et al v. New York Heating Corp. et al; | : | Index No.: | 152337/17 |
| | | : | Mot. Seq.: | 002 |
| 2. | Najaki Virgo and, Jazzmen Virgo v. New York Heating Corp., The Hallen Construction Co., Inc., and, Plumbing Works, Inc.; | : | Index No.: | 152374/17 |
| | | : | Mot. Seq.: | 001 |
| 3. | State Farm Fire & Casualty Company a/s/o Shannon Miller v. Consolidated Edison Company of New York, Inc. et al.; | : | Index No.: | 152168/17 |
| | | : | Mot. Seq.: | 003 |
| 4. | Carmen Quinones et al v. The City Of New York et al | : | Index No.: | 152382/17 |
| | | : | Mot. Seq.: | 002 |
| 5. | Shukriah A. Alshyef et al v. New York Heating Corp et al.; | : | Index No.: | 152388/17 |
| | | : | Mot. Seq.: | 001 |
| 6. | Liseth D. Perez et al v. New York Heating Corp. et al.; | : | Index No.: | 152414/17 |
| | | : | Mot. Seq.: | 002 |
| 7. | James Lesane v. The Spanish Christian Church, Inc. et al.; | : | Index No.: | 160334/14 |
| | | : | Mot. Seq.: | 002 |
| 8. | Lydia Pizarro v. The City Of New York et al.; | : | Index No.: | 160696/14 |
| | | : | Mot. Seq.: | 001 |
| 9. | Kadeisha Joseph v. The City Of New York et al.; | : | Index No.: | 161595/14 |
| | | : | Mot. Seq.: | 004 |
| 10. | Carmen Pagan v. The City Of New York et al.; | : | Index No.: | 151399/15 |
| | | : | Mot. Seq.: | 001 |
| 11. | Najaki Virgo et al v. Kaoru Demler Muramatsu | : | Index No.: | 151564/15 |

	et al.;	:	Mot. Seq.:	001
		:		
12.	Shukriah A. Alshyef et al v. Kaoru Demler Muramatsu et al.;	:	Index No.:	151628/15
		:	Mot Seq.:	001
		:		
13.	Joaquin Mejia-Manzueta v. The City Of New York et al.;	:	Index No.:	152171/15
		:	Mot. Seq.:	001
		:		
14.	Raza Chowdhury et al v. Consolidated Edison, Inc. et al.;	:	Index No.:	153424/15
		:	Mot. Seq.:	003
		:		
15.	Tower Insurance Company of New York v. Consolidated Edison Company of New York, Inc., et al.;	:	Index No.:	153535/15
		:	Mot. Seq.:	002
		:		
16.	Pedro Colon et al v. The City of New York et al.;	:	Index No.:	155247/15
		:	Mot. Seq.:	001
		:		
17.	Kaoru Demler Muramatsu et al v. The City of New York et al.;	:	Index No.:	155591/15
		:	Mot. Seq.:	001
		:		
18.	Janico Meat Corp. et al v. Consolidated Edison, Inc. et al.;	:	Index No.:	155748/15
		:	Mot. Seq.:	001
		:		
19.	Carolyn Torres v. The City of New York et al.;	:	Index No.:	155864/15
		:	Mot. Seq.:	001
		:		
20.	Sarah Borrero et al. v. Consolidated Edison Company of New York, Inc. et al.;	:	Index No.:	155878/15
		:	Mot. Seq.:	002
		:		
21.	J. M. et al v. Kaoru Demler Mumatsu et al.;	:	Index No.:	162332/15
		:	Mot. Seq.:	001
		:		
22.	Noel Robles v. Consolidated Edison Company of New York, Inc. et al.;	:	Index No.:	151214/16
		:	Mot. Seq.:	002
		:		
23.	Hartford Underwriters Insurance Company et al. v. Consolidated Edison Company of New York, Inc. et al.;	:	Index No.:	159593/16
		:	Mot. Seq.:	002
		:		
24.	Robert F. Strakosch v. The Hallen Construction Co., Inc. et al.;	:	Index No.:	150585/17
		:	Mot. Seq.:	001
		:		
25.	Eileen La Puma et al. v. New York Heating Corp. et al.;	:	Index No.:	151061/17
		:	Mot. Seq.:	001

26.	Catalino Moises Cruz-Gonzalez et al. v. New York Heating Corp et al.;	:	Index No.:	151231/17
		:	Mot. Seq.:	001
		:		
27.	Dale Scott et al. v. New York Heating Corp et al.;	:	Index No.:	151324/17
		:	Mot. Seq.:	001
		:		
28.	Mounir Najd v. New York Heating Corp et al.;	:	Index No.:	151386/17
		:	Mot. Seq.:	001
		:		
29.	MN Business Group, Inc., The Kiosk v. New York Heating Corp et al	:	Index No.:	151578/17
		:	Mot. Seq.:	001
		:		
30.	Qasem Al-Rousan v. New York Heating Corp et al.;	:	Index No.:	151579/17
		:	Mot. Seq.:	001
		:		
31.	116 Park Deli Inc. v. New York Heating Corp et al.;	:	Index No.:	151582/17
		:	Mot. Seq.:	001
		:		
32.	Davids Tax Preparation LLC v. New York Heating Corp et al.;	:	Index No.:	151804/17
		:	Mot. Seq.:	001
		:		
33.	MFG Enterprises Corp. v. New York Heating Corp. et al.;	:	Index No.:	151808/17
		:	Mot. Seq.:	001
		:		
34.	Your Health Pharmacy, Inc. d/b/a BJ's Pharmacy v. New York Heating Corp et al.;	:	Index No.:	151809/17
		:	Mot. Seq.	001
		:		
35.	New York Glamour Styles Salon, Inc. v. New York Heating Corp et al.;	:	Index No.:	151842/17
		:	Mot. Seq.:	001
		:		
36.	Christina's Wine & Liquor, Inc. v. New York Heating Corp et al.;	:	Index No.:	151853/17
		:	Mot. Seq.:	001
		:		
37.	Mustafa Nashal d/b/a Green Valley Grocery v. New York Heating Corp et al.;	:	Index No.:	151951/17
		:	Mot. Seq.:	001
		:		
38.	Midtown Fish & Meat Market Corp. v. New York Heating Corp et al.;	:	Index No.:	151953/17
		:	Mot Seq.:	001
		:		
39.	Liza Rivera et al. v. Consolidated Edison Energy Delivery Services, Inc. et al.;	:	Index No.:	152161/17
		:	Mot. Seq.:	001
		:		
40.	Elvin Amadeo v. Hallen Construction Company, Inc. et al.;	:	Index No.:	152220/17
		:	Mot. Seq.:	001

41.	Allstate Insurance Company et al. v. New York Heating Corp. et al.;	:	Index No.:	152307/17
		:	Mot. Seq.:	001
		:		
42.	Leading Insurance Services, Inc. now known as Kookmin Best Insurance Co., LTD a/s/o Kaoru Muramatsu Demler et al. v. New York Heating Corp. et al.;	:	Index No.:	152333/17
		:	Mot. Seq.:	001
		:		
43.	Lashean Daniels et al. v. New York Heating Corp. et al.;	:	Index No.:	152335/17
		:	Mot. Seq.:	001
		:		
44.	Dongbu Insurance Company as subrogee of O.A.C. et al. v. The Hallen Construction Co., Inc. et al.;	:	Index No.:	152346/17
		:	Mot Seq.:	001
		:		
45.	Continental Casualty Company as subrogee of Carnegie Hill Properties, LLC and Piano Picasso Inc. et al.; v. The Hallen Construction Co., Inc. et al.;	:	Index No.:	152347/17
		:	Mot. Seq.:	001
		:		
46.	Federal Insurance Company as subrogee of MacQuesten Development LLC, et al. v. The Hallen Construction Co., Inc. et al.;	:	Index No.:	152348/17
		:	Mot Seq.:	001
		:		
47.	Lisa Connaughton et al. v. New York Heating Corp. et al.;	:	Index No.:	152349/17
		:	Mot. Seq.:	001
		:		
48.	Calvert Apartments LLC et al. v. The Hallen Construction Co. et al.;	:	Index No.:	152350/17
		:	Mot. Seq.:	001
		:		
49.	Berkley Regional Insurance Company v. New York Heating Corp. et al.;	:	Index No.:	152372/17
		:	Mot. Seq.:	001
		:		
50.	The Spanish Christian Church, Inc. v. New York Heating Corp. et al.;	:	Index No.:	152387/17
		:	Mot. Seq.:	001
		:		
51.	George W. Lizzano v. The City Of New York et al.;	:	Index No.:	152509/17
		:	Mot. Seq.:	004
		:		
52.	Ekil Nasser v. New York Heating Corp. et al.;	:	Index No.:	451623/17
		:	Mot. Seq.:	001
		:		
53.	Miguel Vizcaino v. New York Heating Corp. et al.;	:	Index No.:	451624/17
		:	Mot. Seq.:	001
		:		
54.	Kevin E. Jasper Sr. v. New York Heating Corp.	:	Index No.:	451625/17

et al.;	:	Mot. Seq.:	001
	:		
55. Kadeisha Joseph v. New York Heating Corp. et al.;	:	Index No.:	451909/17
	:	Mot. Seq.:	001
	:		
-----X			

J. Kotler, L.:

These actions arise from a gas explosion which occurred on March 12, 2014 at Park Avenue between 116th and 117th Street in the City of New York. The explosion resulted in the destruction of two five-story, mixed use buildings located at 1644 Park Avenue and 1646 Park Avenue and a fire that took more than six days to extinguish. The plaintiffs in these actions have brought claims for, *inter alia*, personal injuries, wrongful death, emotional distress, and property damage against one or more of the following defendants: [1] Consolidated Edison of New York (“ConEd”); [2] the City of New York (“the City”); [3] Hallen Construction Company, Inc. (“Hallen”); [4] Kaoru Demler Maramatsu (“Maramatsu”); [5] The Spanish Christian Church, Inc. (the “Spanish Church”); [6] Plumbing Works, Inc. (“Plumbing Works”); and [7] New York Heating Corporation (“NY Heating” and collectively with the aforementioned herein referred to as the “Defendants”).

Now, NY Heating moves for summary judgment dismissing the complaints against it in the 55 above-captioned actions as well any and all cross-claims. There is no opposition to any of the motions despite notice and an opportunity to respond. Issue has been joined in each of these actions and note of issue has not yet been filed in any of them. For the reasons that follow, the motions are granted on default.

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a *prima facie* case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851

[1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). The party opposing the motion must then come forward with sufficient evidence in admissible form to raise a triable issue of fact (*Zuckerman, supra*). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue find-ing," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

The undisputed facts are that on June 11, 2013, NY Heating installed a ¾ inch gas line from a meter in the basement of 1644 Park Avenue to a stove in a tenant's apartment on the fifth floor of that building. NY Heating obtained a permit to perform the installation prior to that date and afterwards, the installation was inspected, tested and approved by both the New York City Department of Buildings and ConEd. Otherwise, no complaints were ever made about the installation prior to the explosion. On this record, NY Heating has established that the work it performed did not cause the explosion. Therefore, NY Heating is entitled to summary judgment dismissing plaintiff's claims and all cross-claims against it.

Accordingly, it is hereby

ORDERED that NY Heating's motions for summary judgment are granted without opposition; and it is further

ORDERED that plaintiffs' claims against defendant New York Heating Corporation, as

well as any cross-claims against defendant New York Heating Corporation, under the following

Index Numbers, are hereby severed and dismissed:

1. 152168/17
2. 152337/17
3. 152374/17
4. 152382/17
5. 152388/17
6. 152414/17
7. 160334/14
8. 160696/14
9. 161595/14
10. 151399/15
11. 151564/15
12. 151628/15
13. 152171/15
14. 153424/15
15. 153535/15
16. 155247/15
17. 155591/15
18. 155748/15
19. 155864/15
20. 155878/15
21. 162332/15
22. 151214/16
23. 159593/16
24. 150585/17
25. 151061/17
26. 151231/17
27. 151324/17
28. 151386/17
29. 151578/17
30. 151579/17
31. 151582/17
32. 151804/17
33. 151808/17
34. 151809/17
35. 151842/17
36. 151853/17
37. 151951/17
38. 151953/17
39. 152161/17
40. 152220/17
41. 152307/17

42. 152333/17
43. 152335/17
44. 152346/17
45. 152347/17
46. 152348/17
47. 152349/17
48. 152350/17
49. 152372/17
50. 152387/17
51. 152509/17
52. 451623/17
53. 451624/17
54. 451625/17
55. 451909/17

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby rejected and this constitutes the decision and order of the court.

Dated: New York, New York
January 8, 2021

So Ordered:



HON. LYNN R. KOTLER, J.S.C.