

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D12458
A/hu

_____AD3d_____

Argued - February 14, 2006

HOWARD MILLER, J.P.
STEPHEN G. CRANE
DANIEL F. LUCIANO
REINALDO E. RIVERA, JJ.

2004-09370

DECISION & ORDER

Rocky Annunziato, et al., respondents, v City
of New York, appellant.
(Action No. 1)

(Index No. 13634/93)

Richard Casparie, etc., et al., respondents, v City
of New York, appellant.
(Action No. 2)

(Index No. 13635/93)

Alice Stensland, etc., et al., respondents, v City
of New York, appellant.
(Action No. 3)

(Index No. 12154/94)

Robert Dadonna, etc., et al., respondents, v City
of New York, appellant.
(Action No. 4)

(Index No. 13045/94)

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John E. Miesegeaes, respondent, v City
of New York, appellant.
(Action No. 5)

(Index No. 10131/95)

John E. Miesegeaes, etc., et al., respondents, v City
of New York, appellant.
(Action No. 6)

(Index No. 10130/95)

Vincent Acierno, et al., respondents, v City
of New York, appellant.
(Action No. 7)

(Index No. 11299/96)

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Leonard Koerner,
Pamela Seider Dolgow, Elizabeth S. Natrella, Christopher G. King, Carrie Noteboom,
and Janet Sullivan of counsel), for appellant.

Shandell, Blitz, Blitz & Bookson, LLP (Mauro Goldberg & Lilling, LLP, Great Neck,
N.Y. [Kenneth Mauro, Barbara D. Goldberg, and Richard J. Montes] of counsel), for
respondents.

In seven related actions, inter alia, to recover damages for personal injuries, etc., the
defendant appeals, as limited by its brief, from so much of an order of the Supreme Court, Richmond
County (Mega, J.), dated September 21, 2004, as denied those branches of its motion which were to
dismiss the complaints for failure to state a cause of action pursuant to CPLR 3211(a)(7), and for
summary judgment dismissing certain of the plaintiffs' causes of action as time barred pursuant to
CPLR 214-c.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiffs and their decedents in these seven related actions all live or lived near
the New York City Brookfields and/or Fresh Kills landfills in Richmond County, and allege in their
complaints that exposure to carcinogens from the landfills caused them to contract various diseases,

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including leukemia, Hodgkins' disease, and cancer. The City appeals from the denial of those branches of its motion which were to dismiss the complaint for failure to state a cause of action pursuant to CPLR 3211(a)(7), and for summary judgment dismissing 38 of the plaintiffs' causes of action as time barred pursuant to CPLR 214-c.

The City argued, with respect to that branch of its motion which was to dismiss the complaints for failure to state a cause of action, that the plaintiffs could not establish causation, relying upon an affidavit of one of the plaintiffs' expert epidemiologists, dated October 5, 1994, submitted in connection with a prior motion, in which he stated that a scientific determination as to the cause of the plaintiffs' illnesses had not yet been reached. It is clear, however, that the complaints in the related actions plead cognizable causes of action, including the element of causation. Moreover, the City's proof submitted on that branch of the motion failed to conclusively establish that no cause of action exists (*see Rovello v Orofino Realty Co.*, 40 NY2d 633). As such, that branch of the motion which was to dismiss the complaints for failure to state a cause of action was properly denied.

Furthermore, the City failed to make a prima facie showing in support of that branch of its motion which was for summary judgment dismissing certain of the plaintiffs' causes of action as time barred, that, applying the statute of limitations (*see CPLR 214-c[4]*), the plaintiffs' actions were not timely commenced.

MILLER, J.P., CRANE, LUCIANO and RIVERA, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

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