

Hartford Acc. & Indem. Ins. Co. v Keyspan Gas Heat Corp.
2016 NY Slip Op 31865(U)
August 10, 2016
Supreme Court, Suffolk County
Docket Number: 11-31744
Judge: W. Gerard Asher
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SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 32 - SUFFOLK COUNTY

PRESENT:

Hon. W. GERARD ASHER
Justice of the Supreme Court

MOTION DATE 2/10/15 (007,008,009,010&011)
MOTION DATE 3/10/15 (012 & 013)
ADJ. DATE 1/15/16
Mot. Seq. #007 - MD #011 - MD
 #008 - MD #012 - MD
 #009 - MD #013 - MD
 #010 - MD

-----X
HARTFORD ACCIDENT AND INDEMNITY
INSURANCE COMPANY A/S/O REGINALD
and DIEDRE PATTERSON,

Plaintiffs,

- against -

KEYSPAN GAS HEAT CORPORATION d/b/a
NATIONAL GRID USA SERVICE INC., and
SUFFOLK PROPERTY SOLUTIONS LLC.,

Defendants.
-----X

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Upon the following papers numbered 1 to 71 read on these motions for summary judgment; Notice of Motion/
Order to Show Cause and supporting papers 1 - 15; 24 - 27; 31 - 34; 35 - 38; 39 - 47; 51 - 54; 55 - 58; 59 - 67; 68 - 71 ;
Notice of Cross Motion and supporting papers ; Answering Affidavits and supporting papers 16 - 23; 16 - 23; 28 - 30; 16 -
23; 48 - 50; 16 - 23; 16 - 23; 16 - 23; 16 - 23 ; Replying Affidavits and supporting papers ; Other ; (~~and after~~
~~hearing counsel in support and opposed to the motion~~) it is,

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ORDERED that the motions #007 through #013 are consolidated for purposes of this determination; and it is further

ORDERED that the motion (#007) by Francisco L. Lopez and Idaris Luciano for partial summary judgment on the issue of liability against Keyspan Gas East Corporation d/b/a National Grid is denied, without prejudice to move for such relief under the correct caption and index number; and it is further

ORDERED that the motion (#008) by Carl Casimir, Emmanuel Pierre, Marie Casimir, Chad Casimir, Chadmar Casimir, Ernest Casimir, Myrtha Constant and Ismael Constant for partial summary judgment on the issue of liability against Keyspan Gas East Corporation d/b/a National Grid and as against Suffolk Property Solutions, LLC is denied, without prejudice to move for such relief under the correct caption and index number; and it is further

ORDERED that the motion (#009) by Carl Casimir, Emmanuel Pierre, Marie Casimir, Chad Casimir, Chadmar Casimir, Ernest Casimir, Myrtha Constant and Ismael Constant to add National Grid as a party is denied, without prejudice to move for such relief under the correct caption and index number; and it is further

ORDERED that the motion (#010) by Hartford Accident and Indemnity Insurance Company a/s/o Reginald and Diedre Patterson for partial summary judgment on the issue of liability against Keyspan Gas East Corporation d/b/a National Grid is denied, as such motion was superseded by a subsequent motion (#013); and it is further

ORDERED that the motion (#011) by Allstate Insurance Company a/s/o Joseph Lanoue for partial summary judgment on the issue of liability against Keyspan Gas East Corporation d/b/a National Grid is denied, without prejudice to move for such relief under the correct caption and index number; and it is further

ORDERED that the motion (#012) by New York Central Mutual Fire Insurance Company a/s/o Muzaffer and Nursel Karasulu for summary judgment against Keyspan Gas East Corporation d/b/a National Grid is denied, without prejudice to move for such relief under the correct caption and index number; and it is further

ORDERED that the motion (#013) by Hartford Accident and Indemnity Insurance Company partial summary judgment on the issue of liability against Keyspan Gas East Corporation d/b/a National Grid is denied, without prejudice to renewal.

Plaintiff Hartford Accident and Indemnity Insurance Company, as subrogee of its insureds Ronald Patterson and Deidre Patterson, commenced this action (also referred to as Action No. 1) to recover compensatory damages arising out of a house explosion. Each of the remaining actions were brought by plaintiffs to recover damages allegedly sustained as a result of a house explosion which occurred on April 24, 2011, at 10:43 a.m., at 43 Fourth Street, Brentwood, New York. Francisco Lopez alleges that on August 24, 2011, he was in front of his home, known as 45 Fourth Street, walking to his car, which was

parked in his driveway, when he was suddenly thrown approximately six feet and landed between the end of the driveway and the road. He alleges he suffered serious physical injury as a result of the explosion. Idaris Luciano, who also resided at 45 Fourth street, was sitting in her house at the time of the explosion, the window shattered, and she was knocked off the couch onto the floor. She saw a cloud of smoke, fire and debris. She also alleges serious personal injuries due to the explosion.

Lopez and Luciano, who brought an action against Suffolk Property Solutions, LLC, and National Grid Utilities Services, LLC, assigned index number 27830/12 (Action No. 2), move (#007) for partial summary judgment in their favor on the issue of defendant National Grid Utility Services, LLC's liability. In support of the motion Lopez and Luciano submit, among other things, an affidavit of Lopez, a Newsday clipping, multiple photographs, the pleadings, a certified Suffolk County Police supplementary report, State of New York Public Service Commission proceedings, State of New York Public Service Commission settlement approval and agreement, and an expert affidavit of Dr. Burton Z. Davidson. In opposition, Keyspan Gas East Corporation (hereinafter Keyspan or National Grid) submits, among other things, an affirmation of counsel, the supplemental summons in Action No. 1, a stipulation to amend the caption in Action No. 2, the summons and complaint in Action No. 3, the answer and cross-complaint in Action No. 3, a stipulation to amend the caption in Action No. 4 and Action No. 5, and the second amended summons and complaint in Action No. 6.

Carl Casimir, Emmanuel Pierre, Marie Casimir, Chad Casimir, Chadmar Casimir, Ernest Casimir, Myrtha Constant and Ismael Constant, who brought an action against State Farm Insurance Company, Suffolk Property Solutions, Keyspan Gas East Corp., and "ABC Contractors Inc.," assigned index number 110561/13 (Action No. 3) move (#008) for partial summary judgment in their favor on the issue of liability against National Grid and Suffolk Property Services. In support of the motion they submit an affirmation of counsel and an amended summons and complaint. In opposition, Keyspan submits, among other things, an affirmation of counsel, the supplemental summons in this action, a stipulation to amend the caption in Action No. 2, the summons and complaint in Action No. 3, the answer and cross-complaint in Action No. 3, a stipulation to amend the caption in Action No. 4 and Action No. 5, and the second amended summons and complaint in action No. 6. Suffolk Property Services opposes the motion and submits an affirmation of counsel.

Carl Casimir, Emmanuel Pierre, Marie Casimir, Chad Casimir, Chadmar Casimir, Ernest Casimir, Myrtha Constant and Ismael Constant also move (#009) "to add National Grid" as a defendant. In support of the motion, they submit an affirmation of counsel and various correspondence with Keyspan and National Grid's counsel, a supplemental affirmation of counsel, and the affidavit of expert witness and chemical engineer Dr. Burton Z. Davidson, and a second supplemental affirmation, which includes the second amended summons and complaint, additional correspondence, a stipulation regarding State Farm Fire & Casualty Co., and a bill of particulars served in this action. In opposition, Keyspan submits, among other things, an affirmation of counsel, the supplemental summons in this action, a stipulation to amend the caption in Action No. 2, the summons and complaint in Action No. 3, the answer and cross-complaint in Action No. 3, a stipulation to amend the caption in Action No. 4 and 5, and the second amended summons and complaint in action No.6. Keyspan also submits an affirmation of Kathleen S. Commander, the second amended summons and complaint, the answer to the second amended complaint

and cross-claim, a demand for bill of particulars, notice to take depositions, combined demands, notice for discovery, and a stipulation to amend the caption.

Plaintiff Hartford Accident and Indemnity Insurance Company moves (#010) for partial summary judgment in its favor on the issue of Keyspan's liability. In support of the motion, Hartford submits an affirmation of counsel and the pleadings. In opposition, Keyspan submits, among other things, an affirmation of counsel, the supplemental summons in Action No. 1, a stipulation to amend the caption in Action No. 2, the summons and complaint in Action No. 3, the answer and cross-complaint in Action No. 3, a stipulation to amend the caption in Action No. 4 and Action No. 5, and the second amended summons and complaint in action No. 6.

Plaintiff Allstate Insurance Company, which, as subrogee of its insured, Joseph Lanoue, brought an action against National Grid and Suffolk Property Solutions, assigned index number 20736/12 (Action No. 3), moves (#011) for partial summary judgment in its favor on the issue of liability against Keyspan. In support of the motion, Allstate submits an affirmation of counsel and the pleadings. In opposition, Keyspan submits, among other things, an affirmation of counsel, the supplemental summons in this action, a stipulation to amend the caption in Action No. 2, the summons and complaint in Action No. 3, the answer and cross-complaint in Action No. 3, a stipulation to amend the caption in Action No. 4 and action No. 5, and the second amended summons and complaint in action No. 6.

Plaintiff New York Central Mutual Fire Insurance Company, which as subrogee of Muzaffer and Nursel Karasulu, brought a lawsuit against National Grid and Suffolk Property Solutions, assigned index number 29040/12 (Action No. 5), moves (#012) for summary judgment National Grid. In support of the motion New York Central submits, among other things, the pleadings, various photographs, the certified police report, State of New York Public Service Commission proceedings, an expert affidavit of Dr. Burton Z. Davidson, and affidavits of Ron Rubino and George Hanslmaier. In opposition, Keyspan Gas East Corporation d/b/a National Grid, submits, among other things, an affirmation of counsel, the supplemental summons in Action No. 1, a stipulation to amend the caption in Action No. 2, the summons and complaint in Action No. 3, the answer and cross-complaint in Action No. 3, a stipulation to amend the caption in Action No. 4 and Action No. 5, and the second amended summons and complaint in action No. 6.

Plaintiff Hartford Accident and Indemnity Insurance Company moves (#013) for partial summary judgment in its favor on the issue of liability against Keyspan. In support of the motion Hartford submits an affirmation of counsel. In opposition, Keyspan submits, among other things, an affirmation of counsel, the supplemental summons, a stipulation to amend the caption in Action No. 2, the summons and complaint in Action No. 3, the answer and cross-complaint in Action No. 3, a stipulation to amend the caption in Action No. 4 and Action No. 5, and the second amended summons and complaint in action No. 6.

Suffolk Property Solutions, owned by Michael Mendicino, purchased the property located at 43 Fourth Street, Brentwood, New York to renovate and resell. Contractor Luis Perez was renovating the vacant home. Thereafter, the house was in contract and on April 13, 2011, a Maximun Home Inspector

reported a smell of gas to Brizeida Hernandez, the selling real estate agent for Millenium Homes, who reported the gas smell to National Grid. National Grid inspected the gas leak and replaced the regulator and some nipples. The real estate agent asked the National Grid technician to leave the valve off because a new furnace was to be installed. He complied and checked the system for leaks before departing. On April 23, 2011, a neighbor smelled gas when he got out of his car; he went inside his house and the smell went away. On April 24, 2011, a cataclysmic explosion leveled the house, damaged neighboring properties, and injured 21 individuals.

Both the Suffolk County Police Department and the New York State Public Service Commission investigated. The Suffolk County Police Department determined that the explosion was caused by a natural gas release within the house coming into contact with an ignition source. The New York State Public Service Commission investigation located a section of customer-owned piping with an open ended appliance valve (the valve was in the open position with an unconnected and uncapped pipe located downstream). The valve did not contain a locking device in violation of 16 NYCRR §255.727 (d) (1). The Commission also found that the new regulator installed on April 13, 2011 was not inspected or tested in violation of 16 NYCRR § 255.744 (a) and (d). The Commission also found that the National Grid technician failed to follow National Grid procedures regarding the Inspection of High Pressure Service Regulating Equipment (National Grid procedure 040073 - T1), and violated 16 NYCRR § 255.603 (d).

On February 20, 2014, the New York State Public Service Commission instituted a proceeding against Keyspan Gas East Corporation d/b/a National Grid for violation of the gas safety regulations cited above. National Grid settled the action for \$1,000,000.00 from shareholder funds which included \$850,000.00 for a residential methane detector pilot program on Long Island and \$150,000.00 to secure a supply of valve locks. The settlement also provided:

No Admission of Liability

The parties agree that the consideration and other terms of this Agreement do not constitute an admission of liability by KEDLI, that any violation of law is expressly denied and that any liability is expressly denied, and that this Agreement is a full and final settlement of all disputed claims.

On January 16, 2013, the actions under index numbers 27830/2012, 20736/2012, and 2220/2012 were consolidated and the caption was amended. On May 7, 2013, the consolidation order was vacated, and the instant action and the actions under index numbers 27830/12, 20736/12, 2220/12 and 29040/12 were joined for purposes of discovery and trial. Each action retained its own index number, and the parties were directed to file a separate RJI, separate notes of issue and separate judgments. As such, motion seq. 007 through motion seq. 009, and motion seq. 011 and 012 herein are denied, without prejudice, as the applications for relief cannot be decided except under their separate index numbers and captions.

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The motion (#010) by Hartford Accident and Indemnity Insurance Company a/s/o Reginald and Diedre Patterson in Action No. 1 under Index No. 31744/2011 for partial summary judgment on the issue of liability against Keyspan Gas East Corporation d/b/a National Grid and the motion (#011) by Allstate Insurance Company a/s/o Joseph Lanoue in Action No. 3 under Index No. 20736/2012 for partial summary judgment on the issue of liability against Keyspan Gas East Corporation d/b/a National Grid is denied, as it was superseded by a subsequent motion (#013) for the same relief.

The motion (#013) by Hartford Accident and Indemnity Insurance Company a/s/o Reginald and Diedre Patterson for partial summary judgment on the issue of liability against Keyspan Gas East Corporation d/b/a National Grid is denied, without prejudice, as Hartford improperly relies on arguments and evidence submitted by nonparties.

Dated: AUG. 10, 2016

W. Gerard Asher
J.S.C.
HON. W. GERARD ASHER

 FINAL DISPOSITION X NON-FINAL DISPOSITION

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