

<b>Jacobsen v New York City Health &amp; Hosp. Corp.</b>
2011 NY Slip Op 34073(U)
July 13, 2011
Sup Ct, New York County
Docket Number: 103714/08
Judge: Geoffrey D. Wright
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: GEOFFREY D.S. WRIGHT  
*Justice*

PART 62

WILLIAM JACOBSEN,  
Plaintiff/Petitioner(s)

INDEX NO. 103714/08  
MOTION DATE \_\_\_\_\_

- v -

NEW YORK CITY HEALTH AND HOSPITAL CORPORATION,  
Defendant/Respondent(s)

MOTION SEQ. NO. 001

The following papers, numbered 1 to 2 were read on this motion/petition to dismiss the complaint

	PAPERS NUMBERED
Notice of Motion/Petition Order to Show Cause — Affidavits — Exhibits ...	1
Answering Affidavits — Exhibits _____	2,3
Replying Affidavits _____	
Other _____	

Cross-Motion: Yes X No

Upon the foregoing papers, it is ordered that this motion/petition by the Defendant to dismiss the complaint is granted a/p/o.

Dated: July 13, 2011

  
GEOFFREY D. WRIGHT J.S.C.

Check one: X FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

**FILED**

JUL 19 2011

NEW YORK  
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 62

-----X  
WILLIAM JACOBSEN,

Plaintiff(s),

-against-

NEW YORK CITY HEALTH AND HOSPITALS  
CORPORATION,

Defendants(s).  
-----X

Index #103714/08  
Motion Cal. #  
Motion Seq. #  
**DECISION/ORDER**  
Present:  
Hon. Geoffrey Wright  
Judge, Supreme Court

Recitation, as required by CPLR 2219(a), of the papers considered in the review of  
this Motion to: dismiss the complaint

PAPERS	NUMBERED
Notice of Motion, Affidavits & Exhibits Annexed	1
Order to Show Cause, Affidavits & Exhibits	
Answering Affidavits & Exhibits Annex	2,3
Replying Affidavits & Exhibits Annexed	
Other(Cross-motion) & Exhibits Annexed	

**FILED**

**JUL 19 2011**

Upon the foregoing cited papers, the Decision/Order ~~new to M~~ Motion is as follows:  
COUNTY CLERK'S OFFICE

The Plaintiff brings this lawsuit under New York State Human Rights Law (Exec. Law Art. 15); the New York City Administrative Code (8-107) and for common law negligence. The fact pattern here is this: the Plaintiff had worked for the Health and Hospital Corporation for twenty-six (26) years before his termination in March of 2007. Condensing the three claims, the bottom line complaint is the alleged failure of the Defendant to make a reasonable accommodation for the Plaintiff's disability. In this case, the disability is reduction in his lung capacity of some fifty (50%) percent, due to pneumoconiosis, which is defined in wikipedia as an occupational lung disease that is caused by inhaling dust. In the Plaintiff's case, it appears that his disease was brought on being around and inhaling asbestos.

The Plaintiff's last assignment with the Defendant was as an Assistant Health Facilities Planner. In that job, he was required to visit work sites from time to time. It is admitted by all sides that any work site visited by the Plaintiff would be a dust rich environment.

In August 2005, after several years working out of 346 Broadway, the Plaintiff was

assigned to Queens Hospital Center. His disease was diagnosed a month later, in September 2005. Because of his now tender health, the Plaintiff took a three-month leave of absence. In December 2005, his doctor pronounced him ready to return to work, so long as he worked in a dust free environment. This included "any construction site." (1/6/06 letter of George Lawrence of the Civil Service Technical Guild).

The thrust of the complaint, and the Plaintiff's papers in opposition to the defense motion to dismiss the complaint is that at Queens Hospital, he must spend the majority of his time at construction sites. If the Plaintiff were to be granted the accommodation he seeks, he would have to spend about twenty (20%) percent of his time at construction sites. The Plaintiff's own medical evidence, from his doctor's letter, leads to the inevitable conclusion that the Plaintiff cannot, for medical reasons, spend any time at a construction site, and therefor, can never return to his old duties. By the Plaintiff's own evidence, he has not been discriminated against. He has suffered an act of nature due to occupational hazards. He is not entitled to the relief he seeks in the complaint. That being said, I also agree with the defense motion, that this matter is commenced outside of the applicable statute of limitations. The Plaintiff was discharged in March of 2006. This matter was not commenced until March of 2008. An action against the Health and Hospitals Corporation is governed by sections 7401(1)(2) [*UNCONSOL. LAWS 7401(2)* incorporates *GEN MUN. LAW 50-E* by reference] of the Unconsolidated Laws, which requires that any law suit against the corporation be commenced no more than one year and ninety days after the cause of action arose.

I also reject the Plaintiff's due process claims. By his own evidence, his medically dictated need to be in a dust free environment can only be read as a strict liability requirement. His own argument is that he would have to spend some time in a construction zone. He has not made argument that any specific equipment could overcome the doctor's warning and prescription. The motion to dismiss is granted. This constitutes the decision and order of the Court.

Dated: July 13, 2011

  
**GEOFFREY D. WRIGHT**  
AJSC

**FILED**

**JUL 19 2011**

NEW YORK  
COUNTY CLERK'S OFFICE