

Marasco v ExxonMobil Oil Corp.
2020 NY Slip Op 35310(U)
September 10, 2020
Supreme Court, Westchester County
Docket Number: Index No. 54362/2013
Judge: Terry Jane Ruderman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
PETER A. MARASCO, ANTHONY PAUL
MARASCO and JOSEPHINE Z. MARASCO,
trustee and successor-in-interest to CARLTON
MARASCO, as owners and lessors of certain
real property,

Index No. 54362/2013

Motion Sequence Nos. 3 - 6, 8

Plaintiffs,

-against-

DECISION and ORDER

EXXONMOBIL OIL CORPORATION
successor to MOBIL OIL CORPORATION,
Lessee, and EXXONMOBIL ENVIRONMENTAL
SERVICES COMPANY,

Defendants,
-----X

RUDERMAN, J.

The following papers were considered in connection with defendants' in limine motions (sequence 3 - 5), the motion of plaintiff Peter Marasco for an order dismissing, quashing or extending his time to respond to defendants' Offer to Compromise (sequence 6), and defendants' motion to exclude testimony by plaintiffs' two proposed non-party witnesses (sequence 8):

<u>Papers - Sequence 3</u>	<u>Numbered</u>
Order to Show Cause, Affirmation, Exhibits A - B, and Memorandum of Law (NYSCEF Docs. # 91-95, 128)	1
Affidavit in Opposition, Affirmation, Exhibit A (Docs. # 168, 176-177)	2
 <u>- Sequence 4</u>	
Order to Show Cause, Affirmation, Exhibits A - H, and Memorandum of Law (NYSCEF Docs. # 97-107, 129)	3
Affidavit in Opposition, Affirmation, Exhibits A - C (Docs. # 170, 178-180)	4
 <u>- Sequence 5</u>	
Order to Show Cause, Affirmation, Exhibits A - H, and Memorandum of Law (NYSCEF Docs. # 109-119, 130)	5
Affidavit in Opposition, Affirmation (Docs. # 171, 181)	6

- Sequence 6

Order to Show Cause, Affidavit, Exhibits 1 - 3 (NYSCEF Docs. # 121, 126) 7
Defendants' Memorandum of Law in Opposition 8

- Sequence 8

Notice of Motion, Memorandum of Law, Affirmation, Exhibits A - I
(NYSCEF Docs. # 151-163) 9
Affidavit in Opposition (Docs. # 167, 182-183) 10

This action involves claims under Navigation Law § 181 and the common law, relating to an oil spill on plaintiffs' property. The action was previously assigned to this Court for trial, at which time defendants made several motions in limine (motions sequence 3 - 5) to preclude certain anticipated evidentiary submissions, and plaintiff Peter Marasco sought a ruling relating to defendants' Offer to Compromise (motion sequence 6). Another motion in limine by defendant (sequence 8) was submitted thereafter.

When the matter could not begin trial as scheduled, it was referred back to the Trial Ready Part along with the submitted motions, to be referred to and addressed by the trial court at the re-scheduled trial. Trial was rescheduled for August 31, 2020.

Due to the pandemic, the trial could not proceed on that date; it is anticipated that the trial will be rescheduled in the upcoming months. Nevertheless, all the submitted motions were then referred to this Court.

In motion sequence 3, defendant seeks to exclude evidence and testimony concerning spills at other sites, pollution generally occurring as a result of the oil industry, or climate change.

In motion sequence 4, defendants seek to preclude plaintiffs from offering their own opinions regarding highly scientific and technical documents; they characterize such testimony as undisclosed and impermissible expert testimony.

Motion sequence 5 asks this Court to exclude anticipated hearsay. Defendants assert that plaintiffs are likely to testify at trial concerning conversations with certain witnesses who have not been deposed and who will not be called as witnesses.

Motion sequence 8 seeks an order excluding testimony by plaintiffs' proposed witnesses Douglas DeMarchis and Wayne Jeffers.

The foregoing in limine motions, sequences 3, 4, 5 and 8, are of an evidentiary nature, and must be addressed by the trial court when this matter is assigned for trial; they cannot be decided at this time. They are therefore denied with leave to renew upon reassignment of this action for trial.

In motion sequence 6, plaintiff Peter Marasco, having received defendants' Offer to Compromise dated December 9, 2019, which was served on him by certified mail on December 14, 2019, now moves for an order dismissing, quashing or extending his time to respond to the offer. Plaintiff first questions the validity of the Offer to Compromise, since it is the third Offer to Compromise defendants have served. However, he offers no legal basis for the challenge, beyond the observation that CPLR 3221 does not explicitly provide for multiple offers. In the absence of authority supporting his point, that observation fails to state a basis for the relief he seeks in this motion. Nor does plaintiff provide any authority for this Court to extend the ten-day period specified by CPLR 3221.

To the extent plaintiff questions whether the term "more favorable judgment," as used in CPLR 3221, would include the interest and attorney's fees to which he claims entitlement upon obtaining an award of compensatory damages, this aspect of his motion in effect improperly seeks an advisory opinion regarding the operation of a statute, which this Court may not provide.

“The jurisdiction of this Court extends only to live controversies . . . [and it is] prohibited from giving advisory opinions or ruling on academic, hypothetical, moot, or otherwise abstract questions” (*Saratoga County Chamber of Commerce v Pataki*, 100 NY2d 801, 810-811 [2003] [internal quotation marks omitted]).

In sum, plaintiff failed to demonstrate, in his moving papers, the existence of any grounds for an order dismissing, quashing or extending his time to respond to the Offer to Compromise.

Accordingly, defendants’ motions sequences 3, 4, 5, and 8 are denied at this time with leave to renew before the trial court, and plaintiff’s motion sequence 6 is denied in accordance with the foregoing.

This constitutes the decision and order of the Court.

Dated: White Plains, New York
September 10, 2020


HON. TERRY JANE RUDERMAN, J.S.C.