

Matter of Gas Explosion Litig. 1644 & 1646 Park Ave.
2021 NY Slip Op 30037(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.: | 001 |
| 2. | Celeste Samuels v. The Hallen Construction Co, Inc. et al.; | : | Index No.: | 152396/17 |
| | | : | Mot. Seq.: | 003 |
| 3. | Raza Chowdhury v. The Hallen Construction Co, Inc. et al.; | : | Index No.: | 152397/17 |
| | | : | Mot. Seq.: | 003 |
| 4. | Amber Salgado v. Consolidated Edison, Inc. et al.; | : | Index No.: | 157640/14 |
| | | : | Mot. Seq.: | 001 |
| | -and- | : | | |
| 5. | Monserrat Arias-Amacosta et al. v. Consolidated Edison of New York et al.; | : | Index No.: | 153700/14 |
| | | : | Mot. Seq.: | 006 |

-----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”).

In three motions, Hallen moves to dismiss plaintiffs’ complaint pursuant to CPLR § 3126 for failing to comply with discovery orders (Index and Sequence Numbers: 152337/17, Seq 1; 152396/17, Seq. 3; and 152397/17, Seq. 3). In each motion sequence, Plumbing Works cross-moves to dismiss these plaintiffs’ claims as well. There is no opposition to either the motions or the cross-motions. Accordingly, Hallen and Plumbing Works motions are granted in their entirety on default and plaintiffs’ claims against Hallen and Plumbing Works are severed and dismissed as well as any crossclaims by and against these defendants. The balance of 152337/17 as against NY Heating is also severed and dismissed in a separate decision/order signed on even date and therefore this action is fully disposed.

In the action entitled Amber Salgado v. Consolidated Edison, Inc. et al., bearing Index Number 157640/14, ConEd moves to dismiss plaintiff’s complaint pursuant to CPLR § 3126 (motion sequence 1). There is also no opposition to that motion as well. Therefore that motion is granted as well and the complaint by plaintiff Amber Salgado, an infant over the age of fourteen (14) years by her mother and natural guardian, Tara Irizarry, against defendants Consolidated Edison Inc., Consolidated Edison Company of New York, Inc. and Consolidated Edison Energy Delivery Services, Inc. is severed and dismissed. The balance of the action against Muramatsu shall remain.

Finally, in the action entitled Monserrat Arias-Amacosta et al. v. Consolidated Edison of New York et al., under Index Number 153700/14, ConEd moves in motion sequence 6 to dismiss

all but eight plaintiffs' claims due to the failure to provide discovery. Muramatsu cross-moved for the same relief on the same grounds. Meanwhile, in a decision/order dated October 28, 2020, the court granted plaintiffs' counsel's order to show cause (motion sequence 8) to be relieved as counsel counsel for those plaintiffs upon plaintiffs' counsel's filing of proof of compliance with conditions set forth therein. The plaintiffs who were relieved of counsel are specifically:

1. Fausto de Dios Bautista;
2. Adon Flores Encornacion;
3. Noe Sebastian Flores Encornacion;
4. Uriel Rodriguez Flores;
5. Abelardo Cayetano Herandez;
6. Faviola Ibarra;
7. Evelina Ibarra;
8. Nayeli Islas;
9. Ismael Juarez and Teofila Garcia, individually and on behalf of Iker Juarez;
10. Marisela Martinez;
11. Enrique Garcia Martinez;
12. Jose Ricardo Garcia Martinez;
13. Encarnacion and Minerva Mendoza, individually and on behalf of Freddy Mendoza, Daniel Mendoza, Ponciana Mendoza and Gissell Mendoza, Vincente Mendoza, Cesar Mendoza;
14. Estaban Mendoza and Gloria Vazquez, individually and on behalf of Kevin Mendoza, Yenny Mendoza, Ashly Mendoza and Johan Mendoza, Benjamin Mendoza;
15. Francisca Diaz, individually and on behalf of Veronica Mendoza;
16. Lucas Neri;
17. Raul Gayetan Parra;
18. Jose Armando Perez;
19. Martin Ramirez; Maria Luisa Ramirez; Javier Ramirez-Aguilar; Rosa Isela Buchan Ramirez; Oscar Gil Ramirez and Joselin Herrera, individually and on behalf of Oscar Lloyd Gil Herrera;
20. Pedro Carlos Isias Robles;
21. Mario Sierr Rubio;
22. Nicolaca Salazar;
23. Rita Minero Sanchez;
24. Santiago Flores Sanchez;
25. Jose Adan Valeriano-Villareal;
26. Gloria Vazquez;
27. Elio Villareal and Esther Sanchez, individually and on behalf of Victor Villareal and Alex Villareal;
28. Noe Zamudio, individually and on behalf of Leslie Zamudio, Edwin Zamudio and Daniel Zamudio;
and
29. Cesar Justo Razo.

In light of plaintiffs' counsel's withdrawal, the court adjourned motion sequence 6 to December 15, 2020 for the plaintiffs who have been relieved of counsel to either obtain new counsel or file a notification in writing on NYSCEF of the intention to proceed *pro se* (without counsel). To date, no proof of compliance with the conditions set forth in the court's 10/28/20 order has been filed. Therefore, the 30-day stay imposed by the court's 10/28/20 order remains in effect: "no further proceedings shall be taken against the former clients without leave of court for a period of 30 days after service on the former client of the aforesaid notice to appoint a substitute attorney".

The court hereby directs plaintiffs' former counsel, THE WEBSTER LAW FIRM, WELLER, GREEN, TOUPS & TERRELL, LLP, and WHATLEY, KALLAS, LLC, to file proof of service upon their former clients of the notice to appoint a substitute attorney within 20 days. Counsel's failure to comply with this order **shall** result in an order vacating the 10/28/20 decision/order which granted counsel leave to withdraw except upon good cause shown in writing. In light of this result, motion sequence 6 is again adjourned for a control date to February 23, 2021 and ConEd and Muramatsu are directed to serve notice of entry of this decision/order on plaintiffs' former counsel. No in-person appearances are required on the control date.

CONCLUSION

In accordance herewith, it is hereby:

ORDERED that the motion and cross-motion under Index Number 152337/17, Seq 1, is granted without opposition; and it is further

ORDERED that plaintiff's complaint under Index Number 152337/17 is dismissed and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the motion and cross-motion under Index Number 152396/17, Seq. 3, is granted without opposition; and it is further

ORDERED that plaintiff's complaint under Index Number 152396/17 is dismissed and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the motion and cross-motion under Index Number 152397/17, Seq. 3, is granted without opposition; and it is further

ORDERED that plaintiff's complaint under Index Number 152397/17 is dismissed and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that motion sequence 1 under Index Number 157640/14 is granted without opposition; and it is further

ORDERED that plaintiff's complaint under Index Number 157640/14 against defendants Consolidated Edison Inc., Consolidated Edison Company of New York, Inc. and Consolidated Edison Energy Delivery Services, Inc. is severed and dismissed. The balance of the action against Muramatsu shall remain; and it is further

ORDERED that plaintiffs' former counsel, THE WEBSTER LAW FIRM, WELLER, GREEN, TOUPS & TERRELL, LLP, and WHATLEY, KALLAS, LLC, **shall** file proof of compliance with the court's 10/28/20 decision/order on motion sequence 8 under Index Number 153700/14, specifically proof of service upon their former clients of the notice to appoint a substitute attorney **within 20 days**. Plaintiff's counsel's failure to comply with this order **shall** result in an order vacating the 10/28/20 decision/order which granted counsel leave to withdraw except upon good cause shown in writing; and it is further

ORDERED that motion sequence 6 under Index Number 153700/14 is adjourned for a control date to February 23, 2021 and ConEd and Muramatsu are directed to serve notice of

entry of this decision/order upon plaintiffs' former counsel under Index Number 153700/14. No in-person appearances are required on the control date.

This constitutes the decision/order of the court.

Dated: New York, New York
January 8, 2021

So Ordered:



Hon. Lynn R. Kotler, J.S.C.