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| Matter of Gas Explosion Litig. 1644 &1646 Park Ave. |
| 2021 NY Slip Op 30038(U) |
| January 8, 2021 |
| Supreme Court, New York County |
| Docket Number: 780000/15 |
| Judge: Lynn R. Kotler |
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 8**

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IN RE: GAS EXPLOSION LITIGATION 1644 AND 1646 :
PARK AVENUE :

DECISION/ORDER

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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”).

Now, NY Heating moves for summary judgment dismissing the complaints against it in the 55 above-captioned actions as well any and all cross-claims. There is no opposition to any of the motions despite notice and an opportunity to respond. Issue has been joined in each of these actions and note of issue has not yet been filed in any of them. For the reasons that follow, the motions are granted on default.

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a *prima facie* case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851

[1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). The party opposing the motion must then come forward with sufficient evidence in admissible form to raise a triable issue of fact (*Zuckerman, supra*). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue find-ing," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

The undisputed facts are that on June 11, 2013, NY Heating installed a ¾ inch gas line from a meter in the basement of 1644 Park Avenue to a stove in a tenant's apartment on the fifth floor of that building. NY Heating obtained a permit to perform the installation prior to that date and afterwards, the installation was inspected, tested and approved by both the New York City Department of Buildings and ConEd. Otherwise, no complaints were ever made about the installation prior to the explosion. On this record, NY Heating has established that the work it performed did not cause the explosion. Therefore, NY Heating is entitled to summary judgment dismissing plaintiff's claims and all cross-claims against it.

Accordingly, it is hereby

ORDERED that NY Heating's motions for summary judgment are granted without opposition; and it is further

ORDERED that plaintiffs' claims against defendant New York Heating Corporation, as

well as any cross-claims against defendant New York Heating Corporation, under the following

Index Numbers, are hereby severed and dismissed:

1. 152168/17
2. 152337/17
3. 152374/17
4. 152382/17
5. 152388/17
6. 152414/17
7. 160334/14
8. 160696/14
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10. 151399/15
11. 151564/15
12. 151628/15
13. 152171/15
14. 153424/15
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17. 155591/15
18. 155748/15
19. 155864/15
20. 155878/15
21. 162332/15
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32. 151804/17
33. 151808/17
34. 151809/17
35. 151842/17
36. 151853/17
37. 151951/17
38. 151953/17
39. 152161/17
40. 152220/17
41. 152307/17

42. 152333/17
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48. 152350/17
49. 152372/17
50. 152387/17
51. 152509/17
52. 451623/17
53. 451624/17
54. 451625/17
55. 451909/17

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby rejected and this constitutes the decision and order of the court.

Dated: New York, New York
January 8, 2021

So Ordered:



HON. LYNN R. KOTLER, J.S.C.