

<b>Matter of Gas Explosion Litig. 1644 &amp;1646 Park Ave.</b>
2021 NY Slip Op 30527(U)
February 24, 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

IN RE: GAS EXPLOSION LITIGATION 1644 AND 1646 :
PARK AVENUE :
DECISION/ORDER
INDEX No.: 780000/15

This Document Relates To:

- 1. Monserrat Arias-Amacosta et al. v. Consolidated Edison of New York et al.;
Index No.: 153700/14
Mot. Seq.: 006

J. Kotler, L.:

Previously, in an interim order dated January 8, 2021, this motion was adjourned for a control date to February 23, 2021 and ConEd and Muramatsu were directed to serve notice of entry of the 1/8/21 decision/order upon plaintiffs' former counsel. ConEd and Muramatsu have provided proof of service of the 1/8/21 decision/order on plaintiffs' former counsel. The 1/8/21 decision/order is herein incorporated by reference.

Prior to the 1/8/21 decision/order, the court granted plaintiffs' counsel's order to show cause (motion sequence 8) to be relieved as counsel for certain plaintiffs upon filing proof of compliance with conditions set forth therein (decision/order dated October 28, 2020).

Despite the clear mandates of the 10/28/20 and 1/8/21 orders, plaintiffs' counsel has still failed to file proof of service upon their former clients of the notice to appoint a substitute attorney. The court warned in the 1/8/21 decision/order that counsel's failure to comply with that 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."

The plaintiffs who were relieved of counsel by the 10/28/20 decision/order are specifically:

1. Fausto de Dios Bautista;
2. Adon Flores Encornacion;
3. Noe Sebastian Flores Encornacion;
4. Uriel Rodriguez Flores;
5. Abelardo Cayetano Hernandez;
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 repeated failure to comply with this court's orders, the

10/28/20 decision/order granting them leave to withdraw for certain plaintiffs is vacated.

The court now considers the pending motion and cross-motion by ConEd and Muramatsu, respectively.

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.

Plaintiffs' counsel submitted an affirmation in opposition to the motion, claiming in relevant part as follows:

Plaintiffs' counsel seeks withdrawal from all Plaintiffs, except the following: 1. MONSERRAT ARIAS-AMACOSTA individually and o/b/o C.G. 2. EFREN BRITO and ARACELI HERNANDEZ, individually and o/b/o L.G. and A.B. 3. ALFREDO VALDOVINOS and XOCHITL SANCHEZ, individually and o/b/o J.V. and L.V. 4. JUAN GARCIA and SABRINA LUNA o/b/o M.G. 5. JUAN RODRIGUEZ and SANDRA RAZO, individually and o/b/o M.O., I.R. and J.R. 6. JUAN ALCAIDE and ONECIMA CRUZ, individually and o/b/o S.A., E.A. and R.A.

Should Plaintiffs' Order to Show Cause be granted in all parts, Plaintiffs' counsel believes it will make Defendants' Motions to Dismiss moot.

On reply, ConEd's counsel admits that she received some discovery from "Montserrat Arias-Amacosta; C.G., the infant son of Arias-Amacosta; Juan Rodriguez; L.V., the child of Alfredo Valdovinos and Xochitl Sanchez; A.B. and L.G., the children of Efren Brito and Araceli Hernandez; J.V., the child of Alfredo Valdovinos and Xochitl Sanchez; and J.R., the son of Juan Rodriguez and Sandra Razo".

This case has been languishing for years. "Although actions should be resolved on the merits whenever possible, a court may strike a pleading as a sanction against a party who refuses to obey an order for disclosure" (*Rodriguez v. United Bronx Parents, Inc.*, 70 AD3d 492 [1st Dept 2010] [internal citations omitted]; see also CPLR 3126[3]). A court may strike a complaint

when the moving party establishes “a clear showing that the failure to comply is willful, contumacious or in bad faith” (*id.* quoting *Palmenta v. Columbia Univ.*, 266 AD2d 90 [1st Dept 1999]).

Plaintiffs’ failure to provide any discovery in an action which was filed approximately seven years ago is unreasonable, willful and in bad faith. Therefore, the motion and cross-motion to dismiss are granted to the extent that all claims but those asserted by Monserrat Arias-Amacosta; C.G., the infant son of Arias-Amacosta; Juan Rodriguez; L.V., the child of Alfredo Valdovinos and Xochitl Sanchez; A.B. and L.G., the children of Efren Brito and Araceli Hernandez; J.V., the child of Alfredo Valdovinos and Xochitl Sanchez; and J.R., the son of Juan Rodriguez and Sandra Razo are severed and dismissed.

### **Conclusion**

In accordance herewith, it is hereby

**ORDERED** that the 10/28/20 order granting plaintiffs’ counsel leave to withdraw from representing certain plaintiffs specified therein is hereby vacated; and it is further

**ORDERED** that ConEd and Muramatsu’s motion and cross-motion are granted in their entirety; and it is further

**ORDERED** that the following plaintiffs’ claims are hereby severed and dismissed and the Clerk is directed to enter judgment accordingly:


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- 15. Francisca Diaz, individually and on behalf of Veronica Mendoza;
- 16. Lucas Neri;
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- 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;
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- 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.

This constitutes the decision/order of the court.

Dated: New York, New York  
February 24, 2021

So Ordered:




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