

**Matter of New York City Asbestos Litig. v All
Defendants**

2024 NY Slip Op 31901(U)

May 29, 2024

Supreme Court, New York County

Docket Number: Index No. 782000/2017

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA PART 13

Justice

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INDEX NO. 782000/2017

IN RE. NEW YORK CITY ASBESTOS LITIGATION,

MOTION DATE 03/15/2024

Plaintiff,

MOTION SEQ. NO. 011

- v -

ALL DEFENDANTS IN RE. NEW YORK CITY ASBESTOS
LITIGATION,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 011) 4900, 4901, 4902, 4903, 4904, 4905, 4906, 4907, 4908, 4909, 4910, 4911, 4912, 4913, 4914, 4915, 4916, 4917, 4918, 4927, 4928, 4930, 4936, 5114

were read on this motion to/for STAY

Upon the foregoing documents, and after oral arguments, it is ordered that defendant Burnham LLC's instant order to show cause, pursuant to CPLR §2201, seeking to stay all trials against it in the New York City Asbestos Litigation ("NYCAL") pending the resolution of an appeal and seeking to toll its time to file for a motion for summary judgment is hereby denied for the reasons set forth below.

Here, defendant Burnham seeks to stay all trials in NYCAL in which defendant Burnham is a party and wherein punitive damages are sought due to a pending appeal in *Maffei v AO Smith Water Prods. Co.*, Index No. 190378/2018, wherein defendant Burnham lost at trial and a verdict of, *inter alia*, six million five hundred thousand dollars (\$6,500,000.00) was awarded by the jury on the issue of punitive damages. Defendant Burnham further seeks to toll its time to file a motion for summary judgment on the issue of punitive damages for an unspecified amount of time. In support of its motion, defendant Burnham argues that it has been sued in NYCAL in

thousands of asbestos cases, hundreds of which are currently pending. According to defendant Burnham, plaintiffs' theories of liability are substantially the same and defendant Burnham opposes the claim of punitive damages in all such cases. Moving defendant further argues that, as the issue of punitive damages has not been decided by the appellate courts, it would have to continue filing numerous motions in the various NYCAL cases to seek partial summary judgment on the issue of punitive damages. Defendant Burnham contends, *inter alia*, that a stay must be granted so as to preserve judicial resources, to avoid irreparable harm to it, and that its due process would be denied by any additional awards against it on a punitive damages claim. Moving defendant further contends that there is no prejudice to plaintiffs. Defendant Burnham argues that punitive damages in NYCAL cases have no deterrent effect as it has ceased using asbestos numerous years ago, and that additional future awards of punitive damages would impact the amount recoverable from future plaintiffs. Moving defendant further requests that its time to move for summary judgment be tolled to "allow the law on the substantive propriety of punitive damages against Burnham to be clarified in the *Maffei* case and obviate the need for Burnham to continue making partial summary judgment motions, spare plaintiffs from opposing them, and save the Court the time in deciding those motions." Memorandum of Law in Support of Burnham LLC's Motion Seeking a Partial Stay of Punitive Damages Trials Pursuant to CPLR §2201 Pending a Final Adjudication of the *Maffei* Punitive Damages Verdict, p. 3.

As the instant motion was filed under the instant action affecting all cases in NYCAL, several plaintiffs' firms have opposed. The Court considers each opposition papers to be filed on behalf of all plaintiffs with a pending action in NYCAL against moving defendant. Plaintiffs' law firm, Weitz & Luxenberg ("W&L"), opposes the instant motion arguing that defendant Burnham's instant arguments regarding punitive damages have been denied numerous times on

its prior motions for partial summary judgment to dismiss the claim of punitive damages, and that such denials were upheld by the Appellate Division. W&L, on behalf of plaintiffs in NYCAL, further argues that this issue was previously decided by the Honorable Sherry K. Heitler who found that staying one group of plaintiffs' right to seek punitive damages violated their equal protection rights. W&L further argue defendant Burnham's instant motion for a stay is premature as there have been no successive awards of punitive damages against it. Plaintiffs' law firm, The Early Firm, joins in W&L's opposition. Plaintiffs' law firm, Belluck & Fox, LLP, opposes the instant motion and adopts the arguments made by W&L. Defendant Burnham replies.

CPLR §2201 states that “[e]xcept where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.” The Appellate Division, First Department has held that “[a] stay of one action pending the outcome of another is appropriate only where the decision in one will determine all the questions in the other, and where the judgment in one trial will dispose of the controversy in both actions; this requires a complete identity of parties, cause of action and the judgment sought”. *Somoza v Pechnik*, 3 AD3d 394, 394 (1st Dep't 2004).

Preliminarily, the Court notes that no stay has been granted by the Appellate Division pending the appeal. Here, defendant Burnham has failed to establish that it would be proper to grant a partial stay on the issue of punitive damages on hundreds of cases currently pending in NYCAL. Contrary to defendant Burnham's arguments, a stay of hundreds of NYCAL cases does not promote judicial economy and would be a tremendous waste of judicial resources to move a case, or hundreds of cases, towards trial for a mere partial resolution while the remainder of the claims are reserved to be litigated on an unknown future date. Should defendant Burnham's

appeal not be successful, this could lead to two separate trials in all of the hundreds of cases in which defendant Burnham is currently a party.

Here, plaintiff is correct in arguing that defendant Burnham's motion is premature as there have not been successive awards on the claim of punitive damages. Moreover, as the history of NYCAL litigation establishes, the Honorable Sherry K. Heitler, also considered and decided many of the arguments in which defendant Burnham is again arguing herein. In a prior motion, Judge Heitler stated that "Defendants' fear of large, repetitious punitive verdicts in NYCAL may be exaggerated." *In re Matter of New York City Asbestos Litig.*, Index No. 40000/1988, mot. seq. no. 010, Decision/Order dated April 8, 2014, p. 9. Judge Heitler went on to find that "it is noteworthy that during the eight year period between 1988 when the CMO was first established and 1996 when CMO § XVII was implemented, Defendants have proffered only one instance where punitive damages were awarded in NYCAL". *Id.* Defendant Burnham's argument regarding punitive damages causing bankruptcy or limiting awards to future plaintiffs was also previously argued and decided by Judge Heitler who found that "Defendants' argument that punitive damages awards will force businesses into bankruptcy and deplete resources that would otherwise be used to compensate future asbestos victims may similarly be unwarranted at this state of the litigation. ... Defendants have failed to show, empirically or otherwise, that such bankruptcies were caused by punitive damages awards." *Id.* at p. 10. Judge Heitler's sound reasoning similarly applies herein as defendant Burnham has failed to support its arguments with sufficient evidence.

Similarly, with regards to defendant Burnham's argument regarding the denial of due process, such argument is insufficient as it has been previously raised by defendant Burnham in other NYCAL cases and has previously failed. In fact, in a prior motion in this very action, this

issue was determined by the Appellate Division, First Department, who held that the Case Management Order dated June 20, 2017, and with explicit reference to punitive damages claims, “do not deprive defendants of their due process or other constitutional rights, even where they do not strictly conform to the CPLR”. *In re Matter of New York City Asbestos Litig.*, 159 AD3d 576, 578 (1st Dep’t 2018). As such, the Appellate Division has previously addressed defendant Burnham’s arguments that permitting punitive damages violates its due process rights and found that defendants’ rights were not violated.

As to defendant Burnham’s argument that plaintiffs will not be prejudice by a stay, such argument fails. Here, defendant Burnham argues that an allegedly short stay of all the NYCAL cases in which it is a party will not prejudice plaintiffs as the length of the stay would be short. However, it is undisputed that many, if not all, of the plaintiffs who are still living, do not have the luxury of waiting a few months, a few weeks, or even a few days for their day in court. In fact, defendant Burnham readily stated in the moving papers that should their appeal not succeed, they would appeal to the Court of Appeals, thereby significantly lengthening the time that the affected plaintiffs would have to wait to resolve all of their claims. To stay these plaintiffs’ cases, while some are literally on their death bed, for an unknown and indefinite length of time severely prejudices their ability to litigate their action while they are still alive, and would unnecessarily deprive them of their day in court. Similarly, for the plaintiffs who have unfortunately already passed, their grieving family members would be prejudiced by the unnecessary delay in the total resolution of the action. As defendant Burnham has wholly failed to establish that a stay is proper in the NYCAL actions at issue herein, the instant order to show cause is denied. As defendant Burnham’s application for a stay is denied, the portion of moving defendant’s order to

show cause seeking to extend its time to file a motion for partial summary judgment is also denied.

Accordingly, it is

ORDERED that defendant Burnham’s motion to stay all the NYCAL actions in which it is a defendant and seeking to toll its time to file a motion for summary judgment is hereby denied in its entirety; and it is further

ORDERED that within 30 days of entry, defendant Burnham shall serve a copy of this Decision/Order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

5/29/2024
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT