

<b>Tompkins Park Mansion Owners, Ltd. v Consolidated Edison, Inc.</b>
2026 NY Slip Op 30470(U)
February 6, 2026
Supreme Court, New York County
Docket Number: Index No. 656085/2020
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

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TOMPKINS PARK MANSION OWNERS, LTD.,

Plaintiff,

- v -

CONSOLIDATED EDISON, INC., CON EDISON, INC., CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., CON EDISON COMPANY OF NEW YORK, INC., D'ONOFRIO GENERAL CONTRACTORS CORP., PHILADELPHIA INSURANCE COMPANIES, ABC-XYZ CORPORATIONS 1-10, JOHN DOES 1-10, ABC-XYZ CORPORATIONS 11-20, JOHN DOES 11-20

Defendant.

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INDEX NO. 656085/2020

MOTION DATE 01/29/2026

MOTION SEQ. NO. 001

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 126, 127, 128, 129, 130

were read on this motion to/for SUMMARY JUDGMENT.

Defendants Consolidated Edison, Inc., Con Edison, Inc. and Consolidated Edison Company of New York, Inc., Con Edison Company of New York, Inc. (collectively, "Con Ed") and D'Onofrio General Contractors Corp. ("D'Onofrio")'s motion for summary judgment is decided as described below.

**Background**

Plaintiff owns and operates a residential building located on Avenue B in Manhattan and brings this case seeking damages arising out of a sidewalk construction project undertaken by Con Ed and D'Onofrio. It insists that Con Ed got a permit to open up the street and pave the area right near plaintiff's building. Plaintiff contends that defendant D'Onofrio was listed as Con

Ed's contractor for the project. It argues that during this construction, unit owners purportedly saw D'Onofrio using a backhoe as a battering ram to break through the asphalt and concrete which caused "earthquake-like vibrations" throughout the neighborhood. Plaintiff also says there was a significant odor of gas and then Con Ed subsequently shut down gas service to the building. It contends that it took more than a year for gas service to be restored after repairs were required in the meter room as a result of the gas leak.

Plaintiff argues that it filed a claim with its insurance company, defendant Philadelphia, that was denied on the ground that the repairs required in the meter room were from normal wear and tear despite the significant construction activities in the area. It blames Con Ed and D'Onofrio for these damages and questions Philadelphia's denial of coverage.

Con Ed and D'Onofrio (the "Moving Defendants") seek summary judgment on the ground that plaintiff's allegations are unsubstantiated and speculative. They insist that there was no damage to the gas utility where actual excavation was ongoing and that the work was done 20-30 feet from plaintiff's building. Moving Defendants argue that a civil engineer inspected the system in February 2019 on behalf of the insurer and insisted that the gas leaks were from the long-term deterioration of the pipes (*see* NYSCEF Doc. No. 59).

They argue that there is no causation on this record to show that the excavation work caused the damages to plaintiff's gas system. Moving Defendants point to the affirmation of Robert Flynn, another engineer, who contends that the leaks discovered at the three pipe fittings in the basement of plaintiff's building were not caused by Con Ed's construction work (NYSCEF Doc. No. 55). Mr. Flynn concludes:

"[T]hat no damage consistent with ground-borne vibrations was observed on the exterior or within the basement of the subject building at the Premises. Importantly, the area surrounding the subject natural gas pipe penetration through the front foundation wall was absent of vibration-related damage. As such, the roadway

construction activity, including excavating to a maximum depth of three feet (3') using jackhammers and shovels, did not produce any significant ground-borne vibrations which would result in damage to the building itself or to the natural gas piping within the basement of the building. The distance between the natural gas pipe fittings that had reportedly leaked and the roadway construction, and the manner by which the roadway excavations had been performed, precluded damage to the interior piping system as a result of the construction process” (*id.* ¶ 8).

Moving Defendants also claim that the specific equipment in use could not have caused the alleged damage, even if that sort of damage actually took place. They take issue with the various expert reports exchanged in this case from plaintiff and also insist that D’Onofrio did not depart from nationally accepted standards to complete the work in question.

In opposition, plaintiff emphasizes that eyewitnesses to the work from unit owners in the building suggest there were significant vibrations from the construction. It points to its own expert reports, which suggest that the work performed by D’Onofrio on behalf of Con Ed caused the gas leak. Plaintiff points to the report of David Caggiano, an engineer (NYSCEF Doc. No. 65). Mr. Caggiano contends that Con Ed investigated a gas smell in the same area (the laundry room) in November 2018 but did not find any leaks and that the excavation in front of the building started in early 2018 (*id.* at 6). He emphasized that the unit owner who smelled the gas in her unit on the second floor reported it on January 20, 2019 (*id.*).

Mr. Caggiano contends that: “It is clear there was no evidence of leaks prior to the excavation because Con Ed was in the boiler room and gas meter room on multiple occasions immediately prior to the excavation and no leaks were detected. Had similar leaks been present when Con Ed was in the meter room on multiple occasions prior to the excavation they would have notified the Apartment Corporation and shut down the gas service” (*id.* at 8-9). He concludes that “The cause of the gas leaks were vibrations created from excavation work performed on the street 24 – 48 hours prior to the discovery of the leaks” (*id.* at 9).

Plaintiff also points to another affirmation from another engineer, Richard Balgowan, who concludes that:

“The findings from my personal investigation of the matter showed with a reasonable degree of certainty that: (i) the gas leaks discovered on January 20, 2019 at the Building were the direct and proximate result of the excavation work performed by D’Onofrio and Con Edison on Avenue B; (ii) Con Edison and D’Onofrio had been responsible for the inspection and maintenance of the work on Avenue B; (iii) there was no written policy for performing the excavation work or for inspections of the construction procedures other than Con Edison’s standards; and (iv) there is no evidence of gas leaks in the gas piping of the Building prior to the excavation work by D’Onofrio and Con Edison days before the leaks were discovered” (NYSCEF Doc. No. 89, ¶ 11).

Defendant Philadelphia submits opposition in which it observes that “After 6 years and the exchange of 7 expert reports, the Plaintiff and Moving Defendants have not provided any evidence to conclusively establish one theory or another as a matter of law” (NYSCEF Doc. No. 119, ¶ 5). It argues that neither plaintiff nor the Moving Defendants submitted any direct measurements concerning purported vibrations during the excavation of the roadway and sidewalk.

In reply, Moving Defendants contend that there are no genuine issues of material fact raised by plaintiff or by Philadelphia in opposition.

### **Discussion**

The Court denies the motion. The central issue in this case and on this motion is what caused the gas leaks in plaintiff’s laundry room. Moving Defendants contend that the gas leak was caused by simple deterioration of the pipes at plaintiff’s old, old building. Plaintiff argues that the vibrations from the work caused the leak and emphasize that Con Ed did not discover any leaks just a few months prior to the work.

As Philadelphia pointed out, there are numerous expert reports on both sides of this dispute and therefore, this Court must deny the motion. “Where, as here, a nonmovant's expert

affidavit squarely opposes the affirmation of the moving parties' expert, the result is a classic battle of the experts that is properly left to a jury for resolution" (*Mason v Adhikary*, 159 AD3d 1438, 1439, 73 NYS3d 691 [4th Dept 2018] [internal quotations and citation omitted]).

This Court is unable to credit either Moving Defendants' or plaintiff's theory of the cause of the gas leak. The fact is that plaintiff raised material issues of fact that the gas leaks were caused by Moving Defendants' work. Of course, if the fact finder thinks that the work caused the gas leaks, they might also find that plaintiff sustained its other causes of action based on D'Onofrio's negligence and Con Ed's negligent supervision. Similarly, there are issues of fact concerning whether D'Onofrio may be liable for gross negligence. If plaintiff's theory is accepted, then a fact finder might conclude that using equipment without any consideration for the surrounding buildings constitutes gross negligence.

However, as plaintiff did not adequately address Moving Defendant's arguments about negligent hiring, the Court severs and dismisses that cause of action.

Accordingly, it is hereby

ORDERED that defendants Consolidated Edison, Inc., Con Edison, Inc. and Consolidated Edison Company of New York, Inc., Con Edison Company of New York, Inc. and D'Onofrio General Contractors Corp.'s motion is granted only to the extent that the fourth cause of action for negligent hiring is severed and dismissed and denied with respect to the remaining branches of the motion.

2/6/2026  
DATE

  
ARLENE P. BLUTH, J.S.C.

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