

**Page 614**

**656 N.Y.S.2d 614**

**238 A.D.2d 253**

**35 HAMILTON REALTY COMPANY, et al., Plaintiffs-Respondents,**

**v.**

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., Defendant-Appellant,**

**and**

**The City of New York, Defendant.**

**[And A Third-Party Action]**

**Supreme Court, Appellate Division,**

**First Department.**

**April 22, 1997.**

**Page 615**

Jerold Probst, for Plaintiffs-Respondents.

Maura A. Kilroy, for Defendant-Appellant.

Before ELLERIN, J.P., and RUBIN,  
WILLIAMS and TOM, JJ.

MEMORANDUM DECISION.

Order, Supreme Court, New York County (Salvador Collazo, J.), entered March 4, 1996, which, in an action for property damage caused by a gas explosion, granted plaintiffs building owners' motion for partial summary judgment against defendant Con Edison on the issue of liability, severed Con Edison's third-party action against the plumbing contractor, and directed an assessment of damages, unanimously affirmed, with costs. Appeal from order, same court and Justice, entered September 11, 1996, which denied Con Edison's motion for reargument, unanimously dismissed as taken from a nonappealable order.

Con Edison concedes that the explosion would not have occurred had its employee performed an integrity test on the building pipes before restoring gas service, in accordance with proper procedure. It argues, however, that

summary judgment should not have been granted in favor of plaintiffs because issues of fact exist as to whether plaintiffs' negligence contributed to the explosion, and, assuming no such issues of fact, that its third-party action against the plumbing contractor, who made repairs to the building pipes several weeks before the accident, should not have been severed. We disagree. As to plaintiffs' alleged negligence, the Blue Card that has been issued by the City of New York certifying that the prior plumbing work had been properly completed and allowing restoration of gas service eliminated any issue of fact as to plaintiffs' responsibility for the explosion. As to the severance, there being no question of negligence on plaintiffs' part, and as the third-party action may be a lengthy and involved proceeding in which plaintiffs' position will essentially be that of a neutral, we discern no prejudice to Con Edison or other reason why plaintiffs should have to await the outcome of the third-party action before ascertaining their damages (CPLR 3212[e][1]). Contrary to Con Edison's contention, the order entered September 11, 1996 did not grant reargument and, accordingly, that appeal is dismissed.