

Horvath v Ameron Intl. Corp.

Supreme Court of New York, Appellate Division, First Department

April 23, 2024, Decided; April 23, 2024, Entered

Index No. 190002/21, Appeal No. 2107, Case No. 2023-05558

Reporter

2024 N.Y. App. Div. LEXIS 2170 *; 2024 NY Slip Op 02147 **

[1]** Susan Horvath etc., Plaintiff-Respondent, v
Ameron International Corporation, Defendant-Appellant,
A.W. Chesterton Company et al., Defendants.

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SUBJECT TO CHANGE PENDING RELEASE OF THE
FINAL PUBLISHED VERSION.

THIS OPINION IS UNCORRECTED AND SUBJECT
TO REVISION BEFORE PUBLICATION IN THE
OFFICIAL REPORTS.

Prior History: **[*1]** Order, Supreme Court, New York
County (Adam Silvera, J.), entered October 23, 2023,
which denied defendant Ameron International
Corporation's motion for summary judgment dismissing
the complaint and all cross-claims against it,
unanimously affirmed, without costs.

Core Terms

plant, pipe, correctly, asbestos

Counsel: McGivney, Kluger, Clark & Intoccia, P.C.,
New York (Jeffrey S. Kluger of counsel), for appellant.

Simmons Hanly Conroy LLP, New York (John B.
Wetmore of counsel), for respondent.

Judges: Before: Oing, J.P., Moulton, Mendez,
Shulman, Pitt-Burke, JJ.

Opinion

The motion court correctly found that Ameron's
evidence did not "unequivocally establish that its
product could not have contributed to the causation of
plaintiff's injury," and thus correctly denied Ameron's
motion for summary judgment (*Reid v Georgia-Pacific
Corp.*, 212 AD2d 462, 463 [1st Dept 1995]). Plaintiff's

decident (Horvath) testified that he was in contact with
asbestos from Ameron's Bondstrand pipe at a sewage
plant somewhere on the west side of midtown
Manhattan. Ameron argues that the plant Horvath
referenced could only have been the North River
wastewater treatment plant, which did not exist until
1985, at a time when Ameron no longer manufactured
Bondstrand pipe using asbestos. However, Ameron
failed to adduce definitive evidence that Horvath **[*2]**
worked at that specific plant. Moreover, even assuming
Horvath worked at the North River plant, Ameron failed
to show as a matter of law that Horvath could not have
encountered its asbestos-containing pipe. The
evidence submitted by Ameron shows that the plant was
under construction for an extended period of time with
multiple delays, and that contracts for materials had
been entered into prior to 1985.

THIS CONSTITUTES THE DECISION AND ORDER OF
THE SUPREME COURT, APPELLATE DIVISION,
FIRST DEPARTMENT.

ENTERED: April 23, 2024

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