

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

696

CA 12-00130

PRESENT: SMITH, J.P., FAHEY, PERADOTTO, SCONIERS, AND MARTOCHE, JJ.

PEGGY D. LAPP, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

MINNESOTA MINING & MANUFACTURING COMPANY, INC.,
DEFENDANT-APPELLANT.

HODGSON RUSS LLP, BUFFALO (HUGH M. RUSS, III, OF COUNSEL), FOR
DEFENDANT-APPELLANT.

RICHARD J. LIPPES & ASSOCIATES, BUFFALO (RICHARD J. LIPPES OF
COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Wyoming County (Mark H. Dadd, A.J.), entered October 25, 2011 in a personal injury action. The order denied defendant's motion for summary judgment dismissing plaintiff's complaint.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for injuries she sustained as a result of her alleged exposure to toxins while working with a machine that was manufactured by defendant. Plaintiff filed a note of issue on September 1, 2010 and, in May 2011, defendant moved for summary judgment dismissing the complaint. Supreme Court properly denied the motion on the grounds that it was untimely (*see* CPLR 3212 [a]), and that defendant did not meet its burden of demonstrating good cause for its delay in bringing the motion (*see Brill v City of New York*, 2 NY3d 648, 652; *Jones v Town of Le Ray*, 28 AD3d 1177, 1178). In light of our conclusion that the court properly denied defendant's motion, we do not address the remaining issues raised by defendant.

Entered: June 15, 2012

Frances E. Cafarell
Clerk of the Court