

Scott v. Triborough Energy Corp., --- N.Y.S.3d ---- (2021)

2021 N.Y. Slip Op. 03126

2021 WL 1914280
Supreme Court, Appellate Division,
First Department, New York.

John A. SCOTT et al., Plaintiffs–Appellants,
v.
TRIBOROUGH ENERGY
CORP., Defendant–Respondent.

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Index No. 28743/17E

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Case No. 2020-3831

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ENTERED May 13, 2021

Attorneys and Law Firms

Sunshine, Isaacson & Hecht, LLP, Jericho ([Jeffrey A. Sunshine](#) of counsel), for appellants.

Donohue Law Firm, P.C., New York ([Adam S. Picinich](#) and [Robert D. Donohue](#) of counsel), for respondent.

[Renwick, J.P.](#), [Manzanet–Daniels](#), [Kennedy](#), [Shulman](#), JJ.

Opinion

*1 Order, Supreme Court, Bronx County (Donald Miles, J.), entered August 18, 2020, which denied plaintiffs’ motion for summary judgment on liability under [Navigation Law § 181](#), unanimously affirmed, without costs.

Plaintiffs, residential homeowners, commenced this action against defendant, their heating oil delivery company, alleging that it caused an oil spill while making a delivery

to their home. [Navigation Law § 181\(5\)](#) authorizes a private cause of action in strict liability against a petroleum discharger (see [Wheeler v. National School Bus Serv.](#), 193 A.D.2d 998, 999, 598 N.Y.S.2d 109 [3d Dept. 1993]), so long as the plaintiffs have “not caused or contributed to (and thus are not ‘responsible for’) the discharge” ([White v. Long](#), 85 N.Y.2d 564, 569, 626 N.Y.S.2d 989, 650 N.E.2d 836 [1995], quoting [Navigation Law § 172\[3\]](#); see also [Nappi v. Holub](#), 79 A.D.3d 1110, 913 N.Y.S.2d 765 [2d Dept. 2010]; [Tiffit v. Bigelow's Oil Serv., Inc.](#), 70 A.D.3d 1248, 1249, 894 N.Y.S.2d 594 [3d Dept. 2010]).

Although defendant offers only speculation that the spill could have resulted from a defect with the tank or its installation, plaintiffs nevertheless failed to prima facie establish that the spill resulted from the method of delivery and therefore are not entitled to summary judgment regardless of the sufficiency of the opposition papers (see [Winegrad v. New York Univ. Med. Ctr.](#), 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [1985]). Plaintiffs’ reliance on a statement in an introductory paragraph of a report from their environmental consultant stating that the consultant had completed a subsurface soil and indoor air investigation which “was requested after a 275–gallon aboveground storage tank (AST) was improperly filled, spilling oil onto the basement floor” is misplaced. The report makes no findings as to how the spill occurred, and the basis for the statement is unknown, rendering it conclusory. Furthermore, any inferences regarding how the spill occurred that are to be drawn from the report's findings regarding the presence of oil are for the trier of fact.

All Citations

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