

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

202

CA 22-00647

PRESENT: WHALEN, P.J., LINDLEY, GREENWOOD, NOWAK, AND KEANE, JJ.

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TERRI VIGLIETTA, INDIVIDUALLY AND AS EXECUTOR  
OF THE ESTATE OF BENEDICT VIGLIETTA,  
DECEASED, PLAINTIFF,

V

MEMORANDUM AND ORDER

ASBESTOS CORPORATION LIMITED, ET AL., DEFENDANTS,  
AND HEDMAN RESOURCES LIMITED, DEFENDANT-APPELLANT.

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OCCIDENTAL CHEMICAL CORPORATION, NONPARTY-RESPONDENT.  
(APPEAL NO. 1.)

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CLYDE & CO US LLP, NEW YORK CITY (PETER J. DINUNZIO OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

PHILLIPS LYTTLE LLP, BUFFALO (JOSHUA GLASGOW OF COUNSEL), FOR NONPARTY-  
RESPONDENT.

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Appeal from an order of the Supreme Court, Niagara County  
(Deborah A. Chimes, J.), entered April 21, 2022. The order, insofar  
as appealed from, granted the motion of nonparty Occidental Chemical  
Corporation to quash a subpoena issued to it by defendant Hedman  
Resources Limited.

It is hereby ORDERED that said appeal is unanimously dismissed  
without costs.

Memorandum: Defendant Hedman Resources Limited (Hedman) appeals  
from an order insofar as it granted the motion of nonparty Occidental  
Chemical Corporation (OCC) to quash a subpoena served on OCC by  
Hedman. During the pendency of this appeal, this matter proceeded to  
trial, the jury returned a verdict against Hedman and another party,  
and Hedman appealed from the judgment.

The appeal from the order must be dismissed inasmuch as the order  
is subsumed in the final judgment (*see Matter of Aho*, 39 NY2d 241, 248  
[1976]; *Knapp v Finger Lakes NY, Inc.*, 184 AD3d 335, 337 [4th Dept  
2020]; *Smith v Catholic Med. Ctr. of Brooklyn & Queens*, 155 AD2d 435,  
435 [2d Dept 1989]; *see generally* CPLR 5501 [a] [1]).

Entered: May 10, 2024

Ann Dillon Flynn  
Clerk of the Court