

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D26719  
W/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - February 22, 2010

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
DANIEL D. ANGIOLILLO  
ARIEL E. BELEN, JJ.

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2009-06435

DECISION & ORDER

Nancy Ann DeSandolo, appellant, v United Airlines  
Incorporated, et al., respondents.

(Index No. 19545/08)

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Cone & Kilbourn, Mount Kisco, N.Y. (John E. Cone, Jr., and Joseph A. Kilbourn of  
counsel), for appellant.

Little Mendelson, P.C., New York, N.Y. (Alison N. Davis and Ali Ayazi of counsel),  
for respondent United Airlines Incorporated.

In an action to recover damages for intentional infliction of emotional distress and  
gross negligence, the plaintiff appeals, as limited by her brief, from so much of an order of the  
Supreme Court, Westchester County (Colabella, J.), entered June 10, 2009, as granted that branch  
of the defendants' motion which was pursuant to CPLR 3211(a)(7) to dismiss the complaint insofar  
as asserted against the defendant United Airlines Incorporated for failure to state a cause of action.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Accepting the allegations in the complaint as true, according the plaintiff the benefit  
of every favorable inference, and determining only whether the allegations fit within any cognizable  
legal theory (*see Leon v Martinez*, 84 NY2d 83, 87-88), the complaint fails to state a cause of action  
against the defendant United Airlines Incorporated to recover damages for intentional infliction of  
emotional distress and gross negligence (*see Colnaghi, USA v Jewelers Protection Servs.*, 81 NY2d  
821, 823-824; *Howell v New York Post Co.*, 81 NY2d 115, 121; *Murphy v American Home Prods.*  
*Corp.*, 58 NY2d 293, 303).

March 30, 2010

Page 1.

DeSANDOLO v UNITED AIRLINES INCORPORATED

We do not reach the plaintiff's contentions regarding that branch of the defendants' motion which was to dismiss the complaint pursuant to CPLR 3211(a)(2), as that branch of the defendants' motion was not addressed by the Supreme Court in the order appealed from and, thus, remains pending and undecided (*see Katz v Katz*, 68 AD2d 536, 542-543).

RIVERA, J.P., FLORIO, ANGIOLILLO and BELEN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court