

Brown v City of New York

2006 NY Slip Op 30185(U)

August 2, 2006

Supreme Court, New York County

Docket Number: 0103003/2005

Judge: Marilyn Shafer

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: _____

PART _____

Index Number : 103003/2005

BROWN, MONIFA

vs

CITY OF NEW YORK

Sequence Number : 002

DISMISS ACTION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

decided pursuant to attached Rem

FILED
AUG 29 2006
COUNTY CLERK'S OFFICE
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
Motion support for the following reason(s):
City is no longer in case please reassign to non-city part.

Dated: 8/15/06

HON. MARLYN SNAFER, JSC

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MARILYN SHAFER
Justice

PART 62

MONIFA BROWN,

Plaintiff,

-against-

**THE CITY OF NEW YORK and UNIVERSAL AGAMI
TRANSIT, INC.,**

Defendants.

INDEX NO. 103003/05

MOTION DATE _____

MOTION SEQ. NO. 002

The following papers, numbered 1 to 4, were read on this motion:

PAPERS NUMBERED

Notice of Motion — Affidavits — Exhibits	1
Affirmation In Partial Opposition — Exhibits	2
Affirmation in Opposition	3
Replying Affidavits	4

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that the City of New York’s motion is granted.

Plaintiff commenced this action to recover damages for personal injuries she allegedly sustained when a taxicab, owned by defendant Universal Agami Transit, Inc. (“Universal”) collided with a parked vehicle in which plaintiff was a passenger. At the time of the accident, plaintiff was employed by defendant City of New York (the “City”) as a traffic enforcement officer with the City’s Department of Transportation.

The City now moves pursuant to CPLR §3211 dismissing the complaint and all cross-claims against it. In the alternative, the City moves pursuant to CPLR §3212 for summary judgment dismissing the complaint and all cross-claims. The City contends that the complaint and all cross-claims should be dismissed as they are barred by the Workers' Compensation Law. Specifically, the City contends that since plaintiff was an employee of the City at the time of the accident, and the accident occurred while plaintiff was acting in the course of her employment, therefore, plaintiff's exclusive remedy is under the Workers' Compensation Law.

Both Universal and plaintiff oppose maintaining that the City's motion for summary judgment is premature. Universal and plaintiff assert that there is "meaningful discovery outstanding, particularly the depositions of all parties, which will undoubtedly raise issues of fact regarding the circumstances of the instant accident."

It is well settled that "where workmen's compensation provides a remedy, the remedy that it provides, save for the rare case, is exclusive." (*O'Rourke v Long*, 41 NY2d 219, 221 [1976]). In the case at bar, it is uncontroverted that plaintiff was in the City's employ at the time of the accident. It is further undisputed that plaintiff filed a claim for Workers' Compensation benefits and to date, has received benefits totaling \$5,000.00 in wage replacement and medical benefits. The mere fact that discovery is incomplete does not preclude the granting of summary judgment (*Doherty v City of New York*, 16 AD3d 124 [1st Dept 2005]). Here, discovery, including depositions, will not change the fact that plaintiff's sole remedy against her employer is workers' compensation. In exchange for the "swift and sure source of benefits to the injured employee" (*O'Rourke v Long* at 222) is the limitation of the employer's liability for work-related accidents to compensation. Therefore, since plaintiff has not established the existence of an exception, her exclusive remedy against the City is workers' compensation.

Accordingly, it is hereby ORDERED, that defendant the City of New York's motion is granted; and it is further

ORDERED that the complaint and all cross-claims are dismissed against defendant the City of New York with costs and disbursements to the City as taxed by the Clerk of the Court; and it is further

ORDERED that the action shall continue against defendant Universal Agami Transit, Inc.; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This reflects the decision and order of this Court.

Dated: Aug. 2, 2006

~~WILLIAM SHAFER, JRC~~
U.S.C.

Check one: [] FINAL DISPOSITION [X] NON-FINAL DISPOSITION

FILED
AUG 29 2006
COUNTY CLERK'S OFFICE
NEW YORK