

**Anderson v New York City Dept. of Juvenile
Justice**

2007 NY Slip Op 30849(U)

April 17, 2007

Supreme Court, New York County

Docket Number: 0111351/2006

Judge: Eileen A. Rakower

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

PRESENT: _____

PART Part 6

Index Number : 111351/2006

ANDERSON, JAZEL

vs

DEPT. OF JUVENILE JUSTICE

Sequence Number : 001

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

1

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED

APR 23 2007

NEW YORK COUNTY CLERK'S OFFICE
ACCOMPANYING DECISION / ORDER

EILEEN A. RAKOWER

J.S.C. s.c.

Dated: 4/17/07

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

-----X
JAZEL ANDERSON,

Plaintiffs,

Index No.
111351/06

- against -

Decision and
Order

NEW YORK CITY DEPARTMENT OF JUVENILE
JUSTICE, IRMA STEPHENS AND GUY J. PONTILLO

FILED
APR 23 2007
NEW YORK
COUNTY CLERK

Defendants.

-----X
HON. EILEEN A. RAKOWER

Plaintiff brings this action for personal injuries allegedly sustained when she was involved in a motor vehicle accident on January 23, 2006 while employed by the New York City Department of Juvenile Justice. Defendants New York City Department of Juvenile Justice (“City”) and Irma Stephens (“Stephens”) move for dismissal pursuant to 3211(a)(7). Plaintiff does not oppose the motion and defendant Guy J. Pontillo (“Pontillo”) does not submit papers.

Plaintiff was a passenger in a car, driven by defendant Irma Stephens, that was headed southbound on the FDR Drive when they were allegedly struck from behind by defendant Pontillo. At the time of the accident, plaintiff and Stephens were transporting residents of a detention facility to court appearances.

Defendants City and Stephens argue that plaintiff was acting in the course of her employment when the accident occurred and that she is a covered employee under the Workers’ Compensation Law. Thus, her exclusive remedy is to file a Worker’s Compensation claim. Moving defendants argue that plaintiff filed such a claim and submit an excerpt from Plaintiff’s 50-h hearing testimony in which she states that she filed a Worker’s Compensation claim and that she has received one Worker’s

Compensation payment in the amount of \$2,080.00.

Q: Have you made a Workers' Compensation claim?

A: Yes (Plaintiff 50-h Transcript P. 28 Lines 19-21)

...

Q: Have you received Workers' Compensation payments?

A: I received one payment.

Q: How much was that for?

A: It was \$2,080.(Plaintiff 50-h transcript P. 29 Lines 14-18)

Additionally, moving defendants submit a copy of the Workers' Compensation Board Decision and several cancelled checks from a Workers' Compensation Account with plaintiff's signature on them.

Workers' Compensation Law §10 states, in relevant part:

Every employer subject to this charter shall in accordance with this chapter...secure compensation to his employecs and pay or provide compensation for their disability of death from injury arising out of and in the course of the employment without regard to fault as a cause of the injury...

Workers' Compensation Law §11 states, in relevant part:

Alternative Remedy:

The liability of an employer prescribed by the last preceeding section shall be exclusive and in place of any other liability whatsoever, to such employce...

Finally, moving defendants argue that Workers' Compensation law bars claims against co-workers in the same employ if they are acting in the scope of employment and have not committed an intentional tort against the complaining co-worker.

Workers' Compensation Law § 29 (6) provides, in pertinent part, that:

"[t]he right to compensation or benefits under this chapter, shall be the

exclusive remedy to an employee, or in case of death his or her dependents, when such employee is injured or killed by the negligence or wrong of another in the same employ"

Plaintiff is statutorily barred from bringing a civil action against moving defendants and thus has failed to state a cause of action.

Wherefore it is hereby

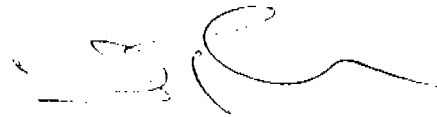
ORDERED that defendant New York City Department of Juvenile Justice and defendant Irma Stephens' motion to dismiss is granted without opposition, and it is further

ORDERED that the Trial Support Office is directed to reassign this case to a non-City part and remove it from the Part 5 inventory. Defendants shall serve a copy of this order on all other parties and the Trial Support Office, 60 Centre Street, Room 158. Any compliance conferences currently scheduled are hereby cancelled, and it is further

ORDERED that the case in all other respects continues.

All other relief requested is denied.

DATED: April 17, 2007



EILEEN A. RAKOWER, J.S.C

FILED
APR 23 2007
NEW YORK
COUNTY CLERK'S OFFICE