SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

PART C2

MARTA ROSARIO

Plaintiff(s),

HON. THOMAS P. ALIOTTA

-against-

DECISION AND ORDER

Index No. 150623/13

THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT and NEIL MEEHAN,

Motion No. 1234-001

Defendant(s).

The following papers numbered 1 to 3 were fully submitted on the 16th day of July, 2014.

	Papers Numbered
Notice of Motion to Dismiss or for Summary Judgment by Defendants THE CITY OF NEW YORK and NEIL MEEHAN, with Supporting Papers and Exhibits (dated March 25, 2014)	1
Affirmation in Opposition by Plaintiffs, with Exhibits (dated June 11, 2014)	2
Reply Affirmation of Defendants THE CITY OF NEW YORK and NEIL MEEHAN, (dated June 17, 2014)	3

Upon the foregoing papers, the motion of defendants THE CITY OF NEW YORK and NEIL MEEHAN for an order pursuant to CPLR 3211(a)(7) dismissing the complaint for failure to state a cause of action, or for summary judgment pursuant to CPLR 3212, is granted.

Plaintiff commenced this action to recover damages for injuries allegedly sustained by her on July 12, 2012, when the vehicle in which she was riding as a passenger was struck by a

vehicle owned by defendant CITY OF NEW YORK (hereinafter THE CITY) and operated by defendant/police officer NEIL MEEHAN (hereinafter MEEHAN).

By way of background, at the time of the subject accident, plaintiff was employed by THE CITY as an Inspector for the Department of Transportation's Signal Division (hereinafter DOT), and continues to be employed in the same capacity at the present time. On July 12, 2012, she was riding as a passenger in an official DOT vehicle after having completed the monitoring of certain traffic signals on Staten Island, and was returning to her office in Long Island City, when an unmarked police vehicle driven by MEEHAN struck the driver's side of the DOT vehicle. As a result of said collision, plaintiff claims to have sustained, *inter alia*, injuries to her back, neck and shoulder. According to plaintiff, she continues to experience pain in these areas on a daily basis; and has been caused to undergo shoulder surgery. Nevertheless, she claims that she still experiences numbness in her legs, and is currently being treated for anxiety.

In August of 2012, plaintiff filed a Notice of Claim against THE CITY, MEEHAN, and the NEW YORK CITY POLICE DEPARTMENT, and in October of 2012, she commenced this action based on allegations of defendants' negligence, *inter alia*, in the ownership, operation, maintenance, management and control of the unmarked police vehicle driven by MEEHAN. Previously, plaintiff sought and was awarded Workers' Compensation benefits following a hearing before the Workers' Compensation Board on December 17, 2012, where it was determined that the injuries to her back, neck and left shoulder were work-related and thus compensable under said statute (*see* Defendants' Exhibit F, Zaragoza Affirmation).

In the present application, defendants move to dismiss the complaint on the ground that plaintiff is barred from suing her employer (THE CITY) for injuries caused by a fellow employee (MEEHAN), for which she is presently receiving Workers' Compensation benefits. In brief, movants contend that Workers' Compensation is plaintiff's exclusive remedy for injuries sustained through the negligence of another in the same employ (*see* Workers' Compensation Laws §§10, 11, 29[6]). More specifically, defendants maintain that since plaintiff and defendant MEEHAN were co-employees of THE CITY, and were acting within the scope of their respective employments at the time of the accident, plaintiff is barred from bringing a common-law negligence action against either under the exclusivity provisions of the Workers' Compensation Law (*id*.).

In opposition, plaintiff contends that she is entitled to proceed against the named defendants with her negligence claims since she and MEEHAN, the operator of the offending vehicle, were not in the "same employ". Pertinent to her premise, plaintiff argues that since she was working for the DOT at the time of the subject accident, and her official duties had nothing whatsoever to do with those of defendant/police officer MEEHAN, the operator of the offending vehicle, they were not co-employees. Alternatively, plaintiff contends that any "co-employee" relationship between herself and defendant MEEHAN is alone insufficient to confer immunity under Worker's Compensation Law §29(6). Rather, plaintiff notes that for the exclusivity provision to apply, the negligence causing the accident must have been committed by the fellow employee while acting within the scope of his or her employment, and that it remains to be determined whether MEEHAN's purported negligence occurred in the context of

their mutual employment by THE CITY. Here, plaintiff argues that since she and MEEHAN were employed by completely different city agencies; that MEEHAN's employment had nothing whatsoever to do with her assigned duties; and that the accident did not occur in the context of any mutual employment or collaborative effort, immunity from suit cannot be conferred upon these defendants as a matter of law. To the contrary, she argues that the question of whether, on these facts, she should be limited to Workers' Compensation as her sole remedy is for a jury to determine.

The Court disagrees.

It is well settled that an employee's sole remedy against his or her employer when injured in the course of an employment is limited to that provided under section 11 of the Workers' Compensation Law. As reiterated most recently in Weiner v. City of New York (19 NY3d 852, 854): "Workers' compensation benefits are [t]he sole and exclusive remedy for an employee against his [or her] employer for injuries [sustained] in the course of [that] employment" (internal quotation marks omitted; *see* Billy v. Consolidated Mach. Tool Corp., 51 NY2d 152, 157). While very limited exceptions to this rule have been sanctioned by the courts of other states, our Court of Appeals has consistently held that the practice of allowing employees to sue their employers directly is "fundamentally unsound" (Billy v. Consolidated Mach. Tool Corp., 51 NY2d at 159), and runs contrary to the intent of the legislature in enacting a system of compensation under which an injured employee is guaranteed access to a swift and sure source of benefits payable, in most cases, without regard to fault, in exchange for the loss of his or her common-law right to pursue a tort action against the employer, and all of the delay,

uncertainty and expense associated therewith (*see* Billy v. Consolidated Mach. Tool Corp., 51 NY2d at 159).

At bar, it is undisputed that plaintiff applied for and received Workers' Compensation benefits. Moreover, it is well established that implicit in any such award is a finding that plaintiff's injuries arose out of and during the course of her employment (*see* O'Rourke v. Long, 41 NY2d 219, 277). Accordingly, plaintiff cannot maintain a separate negligence action against her employer, THE CITY.

Insofar as Officer MEEHAN's status is concerned, even though plaintiff and defendant were engaged in different functions with regard to their employment at the time of the accident, it is uncontroverted that each was performing services on behalf of the same employer, *i.e.*, THE CITY; that they were both being paid by THE CITY; and that they were both engaged in the performance of their respective employments when the accident occurred. The mere fact that they were performing different types of services for THE CITY at the time of the subject accident, does not, in the opinion of this Court, qualify as a sufficient reason to disregard the exclusivity provision of the Workers' Compensation Law. Moreover, this result is in accordance with the established precendents, which hold that the "[e]mployees of different departments within a municipality are considered to be in the same employ," (Lane v. Flack, 73 AD2d 65, 67, *affd for reasons stated at the Appellate Division* 52 NY2d 856, 858), and that "even total divergence in the nature of the duties performed by separate classes of individuals employed by a common employer does not constitute, either expressly or by fair implication, a basis upon which to predicate an exception to the operation of [Workers' Compensation Law

§11]" (DeGuiseppe v. City of New York, 188 Misc 897, 899 [Sup Ct Kings Co 1946], *aff'd* 23 App Div 1010). It is well settled that where an employee has been awarded and accepted workers' compensation benefits, [he or] "she may not ... maintain an action [in tort] against .. any [of the] coemployees involved" (French v. Shaft, 154 AD2d 336, 336). Stated differently, workers' compensation has long been recognized as the exclusive remedy for any employee injured by, *e.g.*, the negligence of a coworker when both were acting within the scope of their employment when the injury occurred (Maines v. Cronomer Val. Fire Dept., 50 NY2d 535, 541-542).[1] Thus, plaintiff cannot maintain a common-law negligence action against either the NEW YORK CITY POLICE DEPARTMENT or Officer MEEHAN.

In opposition, plaintiff has failed to cite any controlling authority which would convince this Court to hold otherwise.

Accordingly, it is

ORDERED that defendants' motion, *inter alia*, to dismiss the complaint is granted; and it is further

ORDERED that the action is dismissed; and it is further

ORDERED that the Clerk enter judgment accordingly.

[1] While not an issue in this case, it may be worthy of note that the protection from suit afforded to fellow employees by the Workers' Compensation Law §11 does not apply to an injury caused by a coworker's willful or intentional acts (*see* Maines v. Cronomer Val Fire Dept., 50 NY2d at 543).

ROSARIO v. THE CITY OF NEW YORK, et al.

E N T E R,

_/S/_____
Dated: AUGUST 29, 2014 HON. THOMAS P. ALIOTTA
J.S.C.