

**Alfonso v Lopez**

2016 NY Slip Op 33139(U)

February 5, 2016

Supreme Court, Onondaga County

Docket Number: 2015EF4166

Judge: Hugh A. Gilbert

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This opinion is uncorrected and not selected for official publication.

At a Term of Supreme Court held in and for the County of Onondaga, in the City of Watertown, New York on the 15<sup>th</sup> day of December, 2015.

H PRESENT: HONORABLE HUGH A. GILBERT  
Supreme Court Justice

STATE OF NEW YORK

SUPREME COURT COUNTY OF ONONDAGA

CARLOS M. SUAREZ ALFONSO,

Plaintiff,

MEMORANDUM  
DECISION AND ORDER

-vs-

Index No. 2015EF4166  
RJI No. 33-15-4018

A EDWIN R. LOPEZ, EVANS DELIVERY COMPANY,  
INC., NATIONWIDE TRUCKING EXPRESS, INC.,  
and UNITED PARCEL SERVICE, INC.,

Defendants.

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Plaintiff Carlos M. Suarez Alfonso commenced this action to recover damages for personal injuries sustained on December 23, 2014. Plaintiff was working at the United Parcel Service's facility in East Syracuse, New York, when Defendant Edwin R. Lopez, an employee of Defendant Evans Delivery Company, Inc., or Nationwide Trucking Express, Inc., struck him with a tractor he was operating.

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This Court incorporates by reference herein the factual and legal recitations made by it in open Court prior to and during the January 20, 2016 oral argument to the same effect as if fully set forth herein below.

Plaintiff applied for Workers' Compensation benefits naming the "UPS Store" as his employer. The Workers' Compensation Board corrected the employer name to United Parcel Service ("UPS") and directed UPS or its carrier to pay benefits in March 2015. Subsequent Notices of Decision were rendered on May 19, 2015, June 16, 2015, July 28, 2015 and September 1, 2015 directing UPS or its carrier to pay specified wages and expenses.

Defendant UPS has filed a pre-Answer Motion to Dismiss the Plaintiff's Complaint pursuant to CPLR §3211(a)(1)(2) and (7) on the grounds that the causes of action are barred by the Workers' Compensation Law. It contends that Workers' Compensation benefits are the exclusive remedy of an employee for injuries sustained in the course of employment and therefore the employee is precluded from maintaining suit. Plaintiff opposed dismissal and the Court conducted oral argument on January 20, 2016.

Plaintiff acknowledges that a final determination that he was an employee of UPS would bar him from pursuing this action against it. Plaintiff notes,

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however, that UPS has consistently maintained that Plaintiff was not an employee in the proceedings before the Workers' Compensation Board. Counsel for UPS has stated that the awards made by its carrier were without prejudice to the final determination on the issue of employee/employer relationship. Plaintiff contends that the matter of whether UPS was his employee on the date of the accident remains unresolved and therefore there is no bar to the maintenance of this action against UPS. He contends that Defendant's motion is premature but he will abide by the final determination rendered by the Board and withdraw the action if it is determined that UPS was his employer. The Court, however, is persuaded by the presentation by and from UPS that a bar against litigation is in place because payments are being made, benefits received, and it has been designated a special employer.

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The Workers' Compensation Board has determined that UPS is Plaintiff's special employer and ordered it to pay benefits. The issue of whether the employer-employee relationship exists is within the sole jurisdiction of the Board and its determination is final and binding until set aside. *O'Connor vs. Midiria*, 55 NY2d 538 (1982). Therefore, Plaintiff's action against UPS is barred and cannot be maintained on the concern that the determination might be modified or set aside.

THEREFORE, it is

ORDERED, ADJUDGED AND DECREED that the motion by United Parcel Service, Inc., dismissing the October 2, 2015 Complaint of Carlos M. Suarez Alfonso against it is granted.

Dated: February 5, 2016  
at Watertown, New York

ENTER



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HUGH A. GILBERT  
Supreme Court Justice

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