

Clark v Armon Prods., Inc.
2019 NY Slip Op 34155(U)
May 29, 2019
Supreme Court, Bronx County
Docket Number: 22851/2017E
Judge: Ruben Franco
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX - IAS PART 26

ROBERT CLARK,

Index No. 22851/2017E

Plaintiff,

-against-

**MEMORANDUM
DECISION/ORDER**

ARMON PRODUCTS, INC., NEW YORK BOTTLING
CO., INC. and CARLOS "DOE", last name being
Fictitious and unknown,

Defendants.

Rubén Franco, J.:

In this personal injury action, defendants Armon Products, Inc. (Armon), New York Bottling Co., Inc. (New York Bottling) (defendants) move pursuant to CPLR 2201 to stay all proceedings in this action until the Workers' Compensation Board schedules a hearing and renders a determination as to whether plaintiff was injured during the course of his employment; alternatively, to stay the proceedings, and for the court to issue an Order referring this matter to the Workers' Compensation Board for a hearing and determination on the issue.

The court has gleaned the following facts from the pleadings and the documents submitted by the parties in connection with the instant motions: Plaintiff alleges that on January 19, 2017, while working as a Machine Operator in the scope of his employment with Armon and its parent company, New York Bottling, he was assaulted by defendant Carlos "Doe", identified as Carlos Cienfuegos (Carlos). The Complaint describes Carlos as "an off-the-clock agent, servant and/or employee" of Armon and New York Bottling. Plaintiff filed this action, and subsequently, filed a Workers' Compensation claim for his injuries. A hearing before the Workers' Compensation Board has never been held, leaving the determination as to whether plaintiff was injured in the

course of his employment undecided. Defendants note that Carlos has not been served and has not appeared in this action.

Defendants assert that the Workers' Compensation Board has jurisdiction over this matter, and that before this action can continue, the Board must determine plaintiff's employment status at the time of his injury. Plaintiff contends that defendants' request for a stay is premature because there is outstanding discovery.

It is ineluctable that plaintiff brings this action seeking damages for injuries allegedly sustained during the course of his employment.

Workers' Compensation Law § 10 provides in part:

Every employer ... shall ... secure compensation to his employees and pay or provide compensation for their disability or 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 provides in part:

The liability of an employer prescribed by the last preceding section shall be exclusive and in place of any other liability whatsoever, to such employee, ... or any person otherwise entitled to recover damages, contribution or indemnity, at common law or otherwise, on account of such injury or death or liability arising therefrom....

Thus, "[w]here an employee is injured in the course of employment, his exclusive remedy against his employer is ordinarily a claim for workers' compensation benefits" (*Valenziano v Niki Trading Corp.*, 21 AD3d 818, 820 [1st Dept 2005]). Generally, an employee cannot sue the employer to recover damages for injuries sustained during the course of the employment once the employer's liability for providing workers' compensation benefits is established. It is for the Workers' Compensation Board, not the courts, to determine a worker's employment status. The issue of whether workers' compensation benefits are available must be adjudicated by the Workers' Compensation Board, not by the courts in a civil action. (*id.*)

In *O'Rourke v Long* (41 NY2d 219, 224 [1976]), the Court noted that the “sole basis for plaintiff's plenary action was that there was no employment relationship....” Where, as in this action, the Complaint sets forth a state of facts which implicate the Workers' Compensation Law provisions, it falls within the exclusive jurisdiction of the Workers' Compensation Board (*id.* at 225). “The question whether a particular person is an employee within the meaning of the workers' compensation statutes is ‘usually ... a question of fact to be resolved by the [Workers'] Compensation Board’ (*O'Rourke v Long*, *supra* at 224, citing *Matter of Gordon v New York Life Ins. Co.*, 300 NY 652 [1950]; see also *Firestein v Kingsbrook Jewish Med. Ctr.*, 137 AD2d 34, 41 [(2nd Dept) 1988])” (*Santigate v Linsalata*, 304 AD2d 639, 640 [2nd Dept 2003]).

In *Shine v Duncan Petroleum Transp.* (60 NY2d 22, 26-27 [1983]), the Court stated: “We held in *O'Rourke v Long* (41 NY2d 219), as acknowledged by both courts below, that the Workers' Compensation Board, as the administrative agency to which the Legislature had entrusted the responsibility, has primary jurisdiction to determine the applicability of the Workers' Compensation Law.” A determination by the Workers' Compensation Board is binding on the claimant “even if he did not apply for or accept the benefits awarded, and precludes an action against the employer for intentional tort.” (*Cunningham v State of New York*, 60 NY2d 248, 252-253 [1983]; see *Melo v Jewish Bd. of Family & Children's Servs.*, 282 AD2d 440 [2nd Dept 2001].)

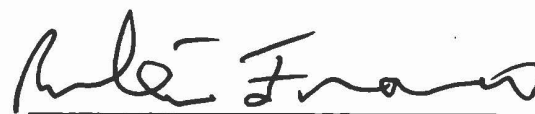
Plaintiff relies on Workers' Compensation Law § 29 (6), which provides in part: “The right to compensation or benefits ... shall be the exclusive remedy to an employee ... when such employee is injured ... by the negligence or wrong of another in the same employ....” While defendants assert that Carlos was not an employee, plaintiff alleges that Carlos was in the employ of defendants. In any event, it is for the Workers' Compensation Board to determine whether Carlos was an employee and the applicability of Worker's Compensation Law § 29 (6).

The discovery sought by plaintiff is not relevant to a determination of the appropriateness of a stay of these proceedings inasmuch as the Workers' Compensation Board has primary jurisdiction regarding the relevant issues presented. Having alleged that he is defendants' employee and that he was injured within the scope of his employment, plaintiff, perforce, must plead his case before the Workers' Compensation Board, not this court.

Accordingly, defendants' motion to stay all proceedings in this action until the Workers' Compensation Board schedules a hearing and renders a determination as to whether plaintiff was injured during the course of his employment, is granted.

The foregoing constitutes the Decision and Order of the court.

Dated: May 29, 2019



Rubén Franco, J.S.C.

HON. RUBÉN FRANCO