

**Sanchez v Delta Airlines, Inc.**

2019 NY Slip Op 35152(U)

July 1, 2019

Supreme Court, Bronx County

Docket Number: Index No. 27247/2018E

Judge: Rubén Franco

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, PART: 26

JUNCO SANCHEZ, JOSE

Index No. 0027247/2018E

-against-

Hon. RUBEN FRANCO,

DELTA AIRLINES, INC.

Justice Supreme Court

The following papers numbered 1 to \_\_\_\_\_ Read on this motion, (Seq. No. 1) for **DISMISSAL**, noticed on **October 05 2018**.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s).
Answering Affidavit and Exhibits	No(s).
Replying Affidavit and Exhibits	No(s).

Upon the foregoing papers, it is ordered that this motion is

**MOTION IS DECIDED IN ACCORDANCE WITH  
MEMORANDUM DECISION FILED HEREWITH.**

Motion is Respectfully Referred to Justice:  
Dated:

Dated: 7/2/19

Hon. *R*

RUBEN FRANCO, J.S.C.

**Rubén Franco**

1. CHECK ONE.....  CASE DISPOSED IN ITS ENTIRETY  CASE STILL ACTIVE
2. MOTION IS.....  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE.....  SETTLE ORDER  SUBMIT ORDER  SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT  REFEREE APPOINTMENT

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX - IAS PART 26

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JOSE JUNCO SANCHEZ a/k/a JOSE JUNCO,

Index No. 27247/2018E

Plaintiff,

-against-

**MEMORANDUM  
DECISION/ORDER**

DELTA AIRLINES, INC. and THE PORT  
AUTHORITY OF NEW YORK AND NEW JERSEY,

Defendants.

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THE PORT AUTHORITY OF NEW YORK AND NEW  
JERSEY,

Third-Party Plaintiff,

-against-

JFK INTERNATIONAL AIR TERMINAL LLC.,

Third-Party Defendant.

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**Rubén Franco, J.:**

In this personal injury action, defendant Delta Airlines, Inc. (Delta) moves to dismiss the Complaint for failure to state a cause of action (CPLR 3211 [a] [7]) because plaintiff’s claims against Delta are barred by Workers’ Compensation Law §§ 11 and 29 (6), which is his exclusive remedy against his employer.

The Complaint states that plaintiff was an “employee/invitee/guest of Delta at JFK Airport....” It further states that on November 22, 2017, “plaintiff was caused to be violently harmed by a rotating shaft sticking out of a bed section of baggage conveyer that caught plaintiff’s clothing causing (1) compression, damage and lacerations to plaintiff’s right arm and back and (2)

severe and permanent personal injuries to plaintiff.” Thus, the Complaint alleges that plaintiff was a Delta employee, who sustained personal injuries due to a work-related accident.

On a motion pursuant to CPLR 3211 (a) (7), a Complaint must be liberally construed, the factual allegations therein must be accepted as true, the plaintiff must be given the benefit of all favorable inferences therefrom, and the court must decide only whether the facts alleged fall under any recognized legal theory (*Miglino v. Bally Total Fitness of Greater N.Y., Inc.*, 20 NY3d 342 [2013]; *Lee v. Dow Jones & Co., Inc.*, 121 AD3d 548 [1<sup>st</sup> Dept 2014]).

Workers’ Compensation Law § 29 (6), 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....” (emphasis added.)

Workers’ Compensation Law § 11 provides in relevant 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.... (emphasis added.)

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 [1<sup>st</sup> 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 [(2<sup>nd</sup> Dept) 1988])” (*Santigate v Linsalata*, 304 AD2d 639, 640 [2<sup>nd</sup> Dept 2003]; see *Croston v Montefiore Hosp.*, 229 AD2d 330, 331 [1<sup>st</sup> Dept 1996]).

Plaintiff does not establish that he was not Delta’s employee, or that he was not injured while working in the scope of his employment. He provides no arguments that bear on the fact that workers’ compensation benefits are his exclusive remedy against Delta, his employer.

The Complaint alleges that plaintiff was employed by Delta and that he was injured during the course of his employment, and it does not allege any facts that would fit his situation into any exceptions to the exclusive remedy provisions (see *Jean-Louis v Hilton Hotels Corp.*, 68 AD3d 406 [1<sup>st</sup> Dept 2008] []), or that Delta has impaired his right to sue a third-party tortfeasor (see *Coley v Ogden Mem. Hosp.*, 107 AD2d 67, 69 [3<sup>rd</sup> Dept 1985]; *Caban v Gottlieb Iron Works*, 147 Misc 2d 583, 585-586 [Sup Ct, NY County 1990]; *affd* 172 AD2d 377 [1<sup>st</sup> Dept 1991]).

Accordingly, Delta’s motion to dismiss the Complaint against it, is granted.

This constitutes the Decision and Order of the court.

Dated: July 1, 2019

  
Rubén Franco, J.S.C.