Slentz v Cortland Regional Med. Ctr.
2020 NY Slip Op 34868(U)
July 7, 2020
Supreme Court, Cortland County
Docket Number: Index No. EF18-006
Judge: Mark G. Masler
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At a Motion Term of the Supreme Court of the State of New York, held in and for the Sixth Judicial District, at the Cortland County Courthouse, in the City of Cortland, New York on the 12th day of June 2020.

PRESENT: HON. MARK G. MASLER
Justice Presiding.

STATE OF NEW YORK
SUPREME COURT: COUNTY OF CORTLAND

DEBORAH SLENTZ,

Plaintiff,

-v-

CORTLAND REGIONAL MEDICAL CENTER,

Defendant.

DECISION AND ORDER

Index No. EF18-006
RJI No. 2018-0794-C

APPEARANCES:

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Via NYSCEF

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MARK G. MASLER, J. S. C.

Plaintiff commenced this action on January 3, 2018 asserting a cause of action for negligence and seeking to recover compensatory and punitive damages for injuries she allegedly sustained as a result of contracting Legionnaires' disease while upon property owned by defendant Cortland Regional Medical Center (CRMC) located at 134 Homer Avenue in Cortland, New York. It is undisputed that plaintiff was employed by CRMC, and defendant now moves, pursuant to CPLR 3211 (a) (7), to dismiss the complaint in its entirety for failure to state a cause of action on the basis that plaintiff failed to plead the unavailability of workers' compensation benefits. In opposition, plaintiff asserts that she was injured outside of the scope of her employment and implicitly contends that she was, therefore, not required to plead the unavailability of workers' compensation benefits.

In her complaint plaintiff alleges that she entered the defendant's employ in May of 2015, that she consumed water while at work and walked near the cooling towers at CRMC on numerous occasions prior to June 27, 2015, when she began to experience symptoms consistent with Legionnaires' disease, and that she has not worked since June 26, 2015 due to injuries she sustained as a result of her illness. The complaint alleges that defendant breached a duty of care owed to patients and visitors to ensure that the premises were safe for use by members of the public. Plaintiff now argues that she contracted the disease solely from exposure that occurred outside of the scope of her employment when, as a member of the public, she drove to and from work and walked near the premises during breaks from work and while running personal errands. Notably, however, in the complaint and the bill of particulars, she acknowledged that she was employed by defendant and that she was exposed to Legionella bacterium "at various locations

within and around" the hospital (verified bill of particulars, ¶ 5 [emphasis added]).

Workers' compensation "is an exclusive remedy as a matter of substantive law and, hence, whenever it appears or will appear from a plaintiff's pleading, bill of particulars or the facts that the plaintiff was an employee of the defendant, the obligation of alleging and, in any event, of proving noncoverage falls on the plaintiff" (Murray v City of New York, 43 NY2d 400, 407, [1977]; accord O'Rourke v Long, 41 N.Y.2d 219, 225 [1976]). Thus, an action is properly dismissed for failure to state a claim where, as here, a plaintiff employed by the defendant fails to allege that workers' compensation benefits are unavailable (see Corp v State of New York, 257 AD2d 742, 742 [1999]). An employee may not avoid this result merely by alleging that the claimed injuries were sustained outside of the scope of employment and, further, whether plaintiff has a claim for damages or is limited to workers' compensation benefits is a determination that must be made by the Workers' Compensation Board in the first instance (see id. at 743; see also Alfonso v Lopez, 149 AD3d 1535, 1536 [2017]; Vasquez v McGeever, 1 AD3d 767, 768 [2003]; Mattaldi v Beth Israel Med. Ctr., 297 AD2d 234, 234-235 [2002]). In light of plaintiff's concession that she did not apply for workers' compensation benefits, dismissal of the complaint is appropriate. Upon any subsequent determination by the Board that workers' compensation benefits are not available to plaintiff, her remedy would be to commence a new action pursuant to CPLR 205 (c) (see Cunningham v State of New York, 60 NY2d 248, 253 [1983]; Alfonso v Lopez, 149 AD3d at 1536-1537; Corp v State of New York, 257 AD2d at 743). Accordingly, defendant's motion is granted and the complaint is dismissed for its failure to state a cause of action.

This decision constitutes the order of the court. The filing of this decision and order, or transmittal of copies hereof, by the court shall not constitute notice of entry (see CPLR 5513).

Dated: July 7, 2020
Cortland, New York

ENTER

MGML

Hon. Mark G. Masler
Supreme Court Justice

The following documents were filed with the Clerk of the County of Cortland:

- Notice of motion dated May 6, 2020.
- Affirmation of Christina M. Verone Juliano dated May 6, 2020, with one Exhibit.
- Affirmation of Janet M. Izzo dated June 4, 2020, with Exhibits A-G.
- Affirmation of Jules Zacher dated June 3, 2020 with Exhibits 1-8.
- Reply Affirmation of Christina M. Verone Juliano dated June 10, 2020, with Exhibits 1-4.
- Decision and order dated July 7, 2020.