

<b>Alam v City of New York</b>
2022 NY Slip Op 31831(U)
June 10, 2022
Supreme Court, New York County
Docket Number: Index No. 151651/2020
Judge: Judy H. Kim
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. JUDY H. KIM **PART** **05RCP**

*Justice*

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MOHAMED ALAM,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY  
DEPARTMENT OF BUILDINGS, THE NEW YORK CITY  
DEPARTMENT OF TRANSPORTATION,

Defendants.

-----X

**INDEX NO.** 151651/2020

**MOTION DATE** 02/08/2022

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to DISMISS.

Upon the foregoing documents, defendants’ motion to dismiss this action is granted.

On February 14, 2020, plaintiff commenced this action for personal injuries allegedly sustained on May 25, 2019, along the street roadway in front of 110 West 56th Street (NYSCEF Doc. No. 1 [Complaint]). Defendants the City of New York, the New York City Department of Buildings, and the New York City Department of Transportation (collectively, the “City”) now move, pursuant to CPLR §3211(a)(7), to dismiss the complaint on the ground that plaintiff’s cause of action is barred by the Workers’ Compensation Law.

In support of its motion the City submits the transcript of plaintiff’s testimony at the General Municipal Law (“GML”) §50-h hearing, wherein he testified that at the time of his accident he was working as a traffic enforcement agent employed by the New York City Police Department (NYSCEF Doc. No. 16 [GML §50-h Tr. at pp. 10-11]). Plaintiff further testified that

he received Workers' Compensation benefits based upon the injuries he sustained from the incident (Id. at ¶14).

The City further submits the affirmation of Mindy Roller, Esq., Assistant Corporation Counsel and Chief of the Workers' Compensation Division at the New York City Law Department, attesting that plaintiff filed a Workers' Compensation claim for the injury sustained on May 25, 2019, and to date, has received approximately \$55,400 in indemnity payments and approximately \$3,470 for medical treatment (NYSCEF Doc. No. 21 [Roller Affirm. at ¶¶2-3]).

### DISCUSSION

Pursuant to Workers' Compensation Law § 10(1), an employee is entitled to receive compensation on a "no-fault" basis for all injuries "arising out of and in the course of the employment" (Melo v Jewish Bd. of Family and Children's Services, Inc., 183 Misc 2d 776, 777 [Sup Ct, Kings County 1999] [internal citations omitted]). Pursuant to Workers' Compensation Law §11, benefits under the workers compensation statute are "[t]he sole and exclusive remedy of an employee against his employer for injuries [sustained] in the course of employment" (Weiner v City of New York, 19 NY3d 852, 854 [2012] [internal citations and quotations omitted]) with certain limited exceptions (See e.g., Martinez v Canteen Vending Services Roux Fine Dining Chartwheel, 18 AD3d 274, 275 [1st Dept 2005] [plaintiff can bring a lawsuit against employer for common-law negligence for intentional tort perpetrated by employer or at employer's direction]). Accordingly, an employee forfeits his or her right to maintain a common law tort action against his or her employer after accepting Workers' Compensation benefits (See Cunningham v City of New York, 60 NY2d 248 [1981]; Weiner v City of New York, 19 NY3d 852, 854 [2012]).

Here, plaintiff concedes that he has accepted Workers' Compensation benefits. He is, therefore, barred from seeking further recovery in this negligence action. Plaintiff disagrees, arguing that Workers' Compensation Law §11 does not preclude him from bringing a claim based upon GML §205-e(1). This argument is unavailing. GML §205-e(1) "creates a statutory right of action where [a police officer's] injury or death is caused by a violation of certain statutes, ordinances, rules, orders and requirements of a governmental entity" (Williams v City of New York, 2 NY3d 352, 359 [2004]) but plaintiff, as a traffic enforcement agent, is not a police officer covered by this statute (See Alleyne v City of New York, 2017 WL 2826094 [Sup Ct, New York County 2017]; Tasela Melton v City of New York, 2016 NY Slip Op 30816(U)\*\*, 2016 WL 1752606 [Sup Ct, NY County 2016]). "Moreover, plaintiff failed to include [his] GML argument in [his] notice of claim or in [his] summons and complaint, which procedurally bars [him] from proceeding on this ground" (Id. [internal citations omitted]; see also Tasela Melton v City of New York, 2016 NY Slip Op 30816(U), 2016 WL 1752606 [Sup Ct, NY County 2016]). In light of the foregoing, the City's motion is granted and this matter is dismissed.

Accordingly, it is

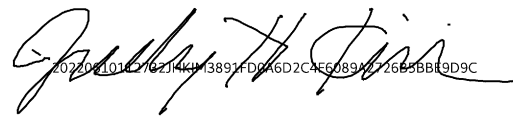
**ORDERED** that the City's motion to dismiss the complaint is granted and the complaint is hereby dismissed in its entirety as to the defendants the City of New York, the New York City Department of Buildings, and the New York City Department of Transportation; and it is further

**ORDERED** that within twenty days of the date of this decision and order, counsel for the City shall serve a copy of this order with notice of its entry upon plaintiff and upon the Clerk of the Court (60 Centre St., Room 141B) and the Trial Support Office (60 Centre St., Rm. 158M) in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk

Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on this court’s website at the address www.nycourts.gov/supctmanh); and it is further

**ORDERED** that upon proof of service of a copy of this order with notice of entry upon all parties, the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.



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6/10/2022

DATE

JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE