

Soifer v Albert Einstein Coll. of Medicine Inc.

2024 NY Slip Op 34940(U)

October 10, 2024

Supreme Court, Bronx County

Docket Number: Index No. 25298/2020E

Judge: Paul L. Alpert

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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

Lydia Soifer

Index No. 25298/2020E

-against-

Hon. Paul L. Alpert

Albert Einstein College of Medicine Inc., the City of
New York and New York City Health and Hospital
Corporation

Justice Supreme Court

The following papers numbered 1 to _____ were read on this motion (Seq. No. 1)
for _____ noticed on _____.

Table with 2 columns: Description of motion papers and No(s). Rows include Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed, Answering Affidavit and Exhibits, and Replying Affidavit and Exhibits.

The defendant's motion is decided in accordance with the annexed decision and order of the court.

Motion is Respectfully Referred to Justice:

Dated:

Dated:

10/10/24

Hon.

Handwritten signature of Paul L. Alpert

HON. PAUL ALPERT

J.S.C.

- 1. CHECK ONE.....
2. MOTION IS.....
3. CHECK IF APPROPRIATE.....
List of checkboxes for case disposition: CASE DISPOSED IN ITS ENTIRETY, CASE STILL ACTIVE, GRANTED, DENIED, GRANTED IN PART, OTHER, SETTLE ORDER, SUBMIT ORDER, SCHEDULE APPEARANCE, FIDUCIARY APPOINTMENT, REFEREE APPOINTMENT.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX; PART 26

-----X
Lydia Soifer,

Index No.: 25298/2020E.

Plaintiff,

-against-

DECISION/ORDER

Albert Einstein College of Medicine Inc., the City of
New York and New York City Health and Hospital
Corporation,

Defendants.

-----X

Recitation, as required by CPLR §2219(a), of the papers considered in the review of the motion as indicated below:

Papers	Numbered
Notice of Motion and Affirmation in Support & Exhibits.....	1
Affirmation in Opposition & Exhibits.....	2
Affirmation in Reply & Exhibits.....	3

Upon the foregoing cited papers the Decision/Order on this motion is decided as follows:

The plaintiff commenced this action for personal injuries following a slip and fall accident that occurred on December 3, 2019 in the parking lot outside of the Van Eck Building of Albert Einstein College of Medicine located at 1225 Morris Park Avenue, Bronx, New York 10461. The plaintiff, Ms. Soifer was on the premises to lead a lecture within her role as a Volunteer Faculty Member of Albert Einstein. The defendant moves for summary judgment pursuant to CPLR § 3212. The plaintiff opposes the motion.

A party seeking summary judgment must make a prima facie showing that it is entitled to judgment as a matter of law by proffering sufficient evidence to demonstrate the absence of any material issue of fact (*Alvarez v. Prospect Hospital*, 68 NY2d 320). Once the proponent of a motion for summary judgment meets this burden it is incumbent upon the party opposing the motion to submit proof in admissible form that an issue of fact exists which necessitates a trial (*Zuckerman v. City of New York*, 49 NY2d 557). The courts function on a motion for summary

judgment is issue finding and not issue determination (*Sillman v. Twentieth Century Fox Film Corp.*, 3 NY2d 395). Summary judgment is a drastic remedy that deprives the litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party (see *Assaf v. Ropog Cab Corp.*, 153 AD2d 520). Summary judgment will only be granted if there are no material, triable issues of fact (see *Sillman supra*). Failure of the movant to sustain its burden requires denial of the motion, regardless of the sufficiency of the opposition (*Winegrad v. New York Univ. Med Center*, 64 NY2d 851).

The defendant argues that summary judgment must be granted as plaintiff's claims are barred under workers compensation law. Workers Compensation Law §§ 11 and 29(6) restricts an employee from suing her employer for an accidental injury sustained in the course of employment (*Fung v. Japan Airlines Co., Ltd.*, 9 NY3d 351). The right to compensation or benefits pursuant to Workers Compensation Law § 29(6) shall be the exclusive remedy to an employee (see Workers Compensation Law § 29[6]). In support of the motion, the defendant has demonstrated that Ms. Soifer received workers compensation benefits providing coverage for her accident.

Moreover, any question of fact as to whether Ms. Soifer was an employee of the defendant is a matter that must be decided by the Workers Compensation Board. "Where the availability of workmen's compensation hinges upon the resolution of questions of fact or upon mixed questions of fact and law, the plaintiff may not choose the courts as the forum for the resolution of such questions" (*O'Rourke v. Long*, 41 NY2d 219, 228).

In opposition, the plaintiff points out that on March 4, 2024, a Worker's Compensation hearing was held to determine whether an employee-employer relationship exists between the parties. The plaintiff annexed a decision by the Workers Compensation Board which found that no employee-employer relationship or volunteer relationship existed (see exhibit A). The plaintiff maintains that the motion for summary judgment should be denied as moot because of this decision.

In reply, the defendant maintains that the defendant filed an appeal of the March 4, 2024 decision with the Worker's Compensation Board. The defendant requests that the court stay the determination of defendants underlying motion for summary judgment as well as the proceeding until the Worker's Compensation Board has come to a full resolution of the matter and makes a decision regarding the current pending appeal. The defendant further requests to file an amended reply affirmation in further rebuttal of the opposition papers should the board overturn its March 4, 2024 decision. However, the defendant improperly raises these arguments for the first time in reply papers. "The function of reply papers is to address arguments made in opposition to the position taken by the movant and not to permit the movant to introduce new arguments in support of, or new grounds for the motion" (*Dannasch v. Bifulco*, 184 AD2d 415, 417). Accordingly, the defendant's motion for summary judgment is denied.

Based on the foregoing, it is hereby:

ORDERED AND ADJUDGED, that the defendant's motion for summary judgment pursuant to CPLR § 3212 is denied, and it is further,

ORDERED AND ADJUDGED, that the defendant shall serve a copy of this decision and order upon the plaintiff within twenty (20) days of notice of entry.

This constitutes the decision and order of the court.

Dated: October 10, 2024



Hon. Paul L. Alpert, J.S.C.