

Rodriguez v Henshaw
2024 NY Slip Op 35495(U)
October 15, 2024
Supreme Court, Westchester County
Docket Number: Index No. 57114/2024
Judge: Paul I. Marx
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
HON. PAUL I. MARX, J.S.C.

To commence the statutory
time period for appeals as of
right (CPLR 5513 [a]), you
are advised to serve a copy
of this order, with notice of
entry, upon all parties.

-----X
YENMARY PENA RODRIGUEZ,

Plaintiff,

Index No.: 57114/2024

-against-

DECISION AND ORDER

Motion Sequence # 1

Motion Date: July 31, 2024

MARY HENSHAW, ALL COUNTY BUS, LLC,
and LUIS QUINONES,

Defendants.
-----X

The papers filed electronically on NYSCEF numbered 11 through 20 were read on the motion of Defendants All County Bus, LLC and Luis Quinones to dismiss the Complaint.

Upon the foregoing papers, it is ORDERED that the motion is disposed as follows.

BACKGROUND

On October 20, 2022, Plaintiff Yenmary Pena Rodriguez was working as a school bus matron employed by Defendant All County Bus, LLC ("All County"), when she was allegedly injured in a motor vehicle accident while riding as a passenger on a school bus owned by All County and operated by Defendant Luis Quinones ("Quinones"). The school bus came into contact with a vehicle operated by Defendant Mary Henshaw ("Henshaw") (the "Accident").

On February 12, 2024, Plaintiff commenced the instant negligence action against Defendants by filing the Summons and Verified Complaint.

On May 14, 2024, Defendants All County and Quinones (together "Moving Defendants") filed their Verified Answer. On May 31, 2024, they filed their Amended Verified Answer with twenty-three affirmative defenses and two cross-claims against Henshaw.

On June 3, 2024, Moving Defendants filed the instant motion to dismiss the Complaint pursuant to CPLR §§3211(a)(1) and (7). They contend that this action is barred by Workers' Compensation Law §§11 and 29(6). Neither Plaintiff nor Henshaw have opposed the motion.

DISCUSSION

CPLR §3211(a)(1) permits a party to move to dismiss causes of action asserted against them “on the ground that...a defense is founded upon documentary evidence.” CPLR §3211(a)(1). “A motion on this ground ‘may be appropriately granted only where the documentary evidence utterly refutes [the moving party’s] allegations, conclusively establishing a defense as a matter of law.’” *Clarke v Laidlaw Tr., Inc.*, 125 AD3d 920, 921 [2nd Dept 2015] (quoting *Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314, 326).

“‘In order for evidence to qualify as ‘documentary’, it must be unambiguous, authentic, and undeniable’”, such as judicial records and documents reflecting out-of-court transactions, like mortgages, deeds, and contracts. *Magee-Boyle v Reliastar Life Ins. Co. of N.Y.*, 173 AD3d 1157, 1159 [2nd Dept 2019] (quoting *Granada Condominium III Assn. v Palomino*, 78 AD3d 996, 996-97 [2nd Dept 2010]). Letters, emails, and affidavits do not qualify as “documentary evidence”. *Id.*

Moving Defendants submit (1) the Police Accident Report from the Accident, (2) Plaintiff’s Form W-2 statement for tax year 2022, (3) Plaintiff’s pay stubs covering the date of the accident, (4) correspondence acknowledging Plaintiff’s Workers’ Compensation Claim, and (5) a statement detailing the Workers’ Compensation benefits paid to Plaintiff through May 24, 2024. The documents are accompanied by the affidavit of Donald Gregory, the President and Chief Executive Officer of All County, wherein Mr. Gregory avers that the documents prove that Plaintiff was an employee of All County who was working within the scope of her employment alongside her colleague Quinones at the time of the accident, and that she collected Workers’ Compensation benefits for the injuries she sustained in the Accident.

The documents submitted by Moving Defendants qualify as “unambiguous, authentic, and undeniable”. While affidavits typically do not qualify as “documentary evidence” for the purposes of CPLR §3211(a)(1), Mr. Gregory’s affidavit simply restates the information that is contained in the accompanying documents. Accordingly, the Court may consider the documents submitted on the instant motion.

Under CPLR §3211(a)(7), a defendant may move for dismissal of a cause of action asserted against him due to the plaintiff’s failure to adequately state a claim for relief. “In considering a

motion to dismiss pursuant to CPLR 3211(a)(7), the court is required to accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” *Cruciata v O'Donnell & McLaughlin, Esqs.*, 149 AD3d 1034, 1034-35 [2nd Dept 2017]. “Statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.” CPLR §3013.

Employers, including All County, are required by law to obtain and keep in effect workers’ compensation insurance coverage from an insurance carrier. Workers’ Compensation Law §10. Workers’ Compensation Law §29(6) provides that the right to compensation or benefits under Workers’ Compensation Law “shall be the exclusive remedy to an employee...when such employee is injured...by the negligence or wrong of another in the same employ[.]” Section 11 of the Workers’ Compensation Law further states “[t]he liability of an employer prescribed by [Section 10] 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.”

In other words, under Workers’ Compensation Law, an employee who is injured in the course of their employment by a fellow worker or their employer has the exclusive remedy of filing for Workers’ Compensation benefits. *Reynoso v Ahava 750, LLC*, 185 AD3d 1074 [2nd Dept 2020]; Workers’ Compensation Law §§11, 29(6). The employee cannot sue their employer or a fellow employee for an accidental injury that they sustained in the course of their employment. *Id.*

The documentary evidence submitted by the Moving Defendants demonstrates that Plaintiff was accidentally injured by a fellow worker while she was acting in the scope of her employment, that she filed a claim for Workers’ Compensation benefits for the injuries she sustained, and that she received Workers’ Compensation benefits for that injury. Consequently, she is barred from bringing the instant negligence action against Moving Defendants pursuant to Workers’ Compensation Law §§ 11 and 29(6).

Accordingly, Moving Defendants motion to dismiss the Complaint against them is granted.

CONCLUSION

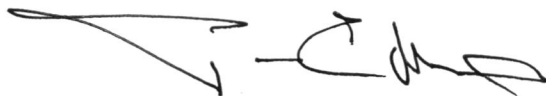
It is ORDERED that the motion of Defendants All County Bus, LLC and Luis Quinones to dismiss is granted; and it is further

ORDERED that the Clerk of the Court shall enter judgment awarding Defendants All County Bus, LLC and Luis Quinones all statutory costs and disbursements incurred in defending this action.

The foregoing constitutes the Decision and Order of the Court.

Dated: October 15, 2024
White Plains, New York

E N T E R



HON. PAUL I. MARX, J.S.C.