

Rogriguez-Rubio v Worldwide Flight Servs., Inc.

2025 NY Slip Op 31989(U)

June 2, 2025

Supreme Court, Kings County

Docket Number: Index No. 526368/2023

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 2nd day of June 2025

PRESENT: HON. ANNE J. SWERN, J.S.C.

LUIS ROGRIGUEZ-RUBIO,

Plaintiff,

-against-

WORLDWIDE FLIGHT SERVICES, INC., "ABC CORP.",
representing a yet unknown company and "JOHN DOE",
representing a yet unknown forklift operator,

Defendants.

DECISION & ORDER

Index No.: 526368/2023

Calendar No.: 41 & 42

Motion Seq.: 001 & 002

Recitation of the following papers as required by CPLR 2219(a):

**Papers
Numbered**

MS001	Plaintiff's Notice of Motion, Affirmations & Exhibits (NYSCEF 6-15)....	1, 2
	Defendant's Response to Statement of Material Facts (NYSCEF 32)	3
MS002	Defendant's Notice of Cross-Motion, Affirmation and Exhibits (NYSCEF 19-31).....	4, 5
	Plaintiff's Affirmations and Memorandum of Law in Opposition (NYSCEF 39-42).....	6

Upon the foregoing papers and after oral argument, the decision and order of the Court is as follows:

Plaintiff has moved this Court for an order granting summary judgment on the issue of liability. Defendant has cross-moved for an order granting leave to amend its answer to include the defense of Workers Compensation Law § 11 and § 29 [6] and, upon granting leave, dismissing this action per CPLR § 3212 based on plaintiff's status as a special employee of WFS.

Plaintiff sustained personal injuries in the course of his employment as a security guard employed by non-party Corporate Loss Prevention Associates (CLPA). The accident occurred while he was working on location at the Worldwide Flight Services, Inc. (WFS) air cargo facility in Building 75 at John F. Kennedy International Airport (JFKIA). The accident occurred when plaintiff was inspecting cargo for hazards and threats and was twice struck by a forklift operated by a WFS employee. It is undisputed that plaintiff has received workers' compensation benefits through CLPA's insurance carrier.

The general manager for WFS submitted an affirmation stating that prior to plaintiff's accident, WFS contracted with CLPA to provide security personal and cargo screeners for WFS's operations in various of JFKIA. The CLPA employees worked exclusively for WFS until their services were no longer required or WFS requested the employees to be replaced, which was tantamount to being fired from working at WFS's locations. Per the contract, WFS paid a fee to CLPA for each employee based on their position, weekly work schedule, and overtime rates. The employees' salaries and workers' compensation benefits were paid by CLPA. (NYSCEF 28, ¶¶1-5; and *see* NYSCEF 29 [the contract]).

The CLPA employees performing security services "at the yellow line between the administrative area and the cargo area" were directed by a CLPA supervisor. However, WFS personnel directed the manner, details and ultimate result of the CLPA employees who were performing cargo screening in the cargo area. (NYSCEF 28, ¶6). WFS also provided CLPA employees with cargo screening equipment to perform their duties, *i.e.*, a computer, iPad, explosive trace device and x-ray (*id.*, ¶7). Plaintiff's affidavits state that he would inspect cargo for hazards and threats but that he reported to a CLPA supervisor, thus contradicting the general

manager's assertions that WFS supervised his duties in the cargo area (NYSCEF DOC. 9, ¶2 and DOC. 41, ¶3).

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). "Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution" (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v Prospect Hospital*, 68 NY2d 324). The Court's only role upon a motion for summary judgment is to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.*, 18 NY3d 499, 505 [2012]) or the credibility of the movant's version of events (see *Xiang Fu He v Troon Management, Inc.*, 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court must view the evidence in the light most favorable to the nonmoving party, affording them the benefit of all reasonable inferences that can be drawn from the evidence (see *Negri v Shop & Stop, Inc.*, 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence, or where the credibility of the witnesses is in question (see *Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept. 2002]).

The Courts have held that "a general employee of one employer may also be in the special employ of another, notwithstanding the general employer's responsibility for payment of wages and maintaining workers' compensation and other employee benefits" (*Thompson v Grumman Aerospace Corp.*, 78 NY2d 553, 557 [1991]). To determine special employee status, the Courts analyze whether the general employee is transferred temporarily for whatever duration of time to a special employer, a clear demonstration of surrender of control by the general employer and assumption of control by the special employer (*id.*). The determination of

special employee status is generally a question of fact unless the critical facts are undisputed. Although no one factor is determinative, the employer who “controls and directs the manner, details and ultimate result of the employee’s work” is given significant weight and focus (78 NY2d 558). The contractual language that designates an employee as one of the general employer is not controlling to determine special employee status because the employee is not a party to the contract; it is the employee’s actual relationship to the special employer (78 NY2d 559-560). The employers cannot “thrust” the employee into a special employment relationship without their knowledge or consent and the understanding that they are under the control of the special employer (*see Thompson v Grumman Aerospace Corp.*, 78 NY2d 558 and *Zupan v Irwin Contracting, Inc.*, 145 AD3d 715, 718 [2nd Dept 2016], *citing Murray v. Union Ry. Co. of New York City*, 229 NY 110, 113 [1920]). The employee is not charged with the legal consequences of the employers’ contract without the foregoing (*Murray v. Union Ry. Co. of New York City*, 229 NY 113).

The branch of defendant’s cross-motion to amend its answer to include the affirmative defense of the exclusivity of Workers Compensation §11 and §29 [6] is granted. Defendant has demonstrated that the defense is not patently devoid of merit and does not prejudice plaintiff as discovery has not been conducted (*see Mortgage Electronic Registration Systems, Inc. v Holmes*, 131 AD3d 680, 662 [2d Dept 2015]; CPLR § 3025 [b]). Now that the motions for summary judgment have been decided, the automatic stay of disclosure per CPLR § 3214 [b] is lifted. The parties shall appear for a compliance conference in the Central Compliance Part on 6/24/2025 so that discovery may proceed.

Nevertheless, the motion and cross-motion for summary judgment are denied without prejudice and with leave to renew upon the completion of discovery and after the filing of the

note of issue. A question of fact exists whether WFS had “the *exclusive* right to control and direct the manner, details, and ultimate result of plaintiff’s work...[and] that plaintiff had knowledge of, and consented to, a special relationship” (*Zupan v Irwin Contracting, Inc.*, 145 AD3d 718, citing *Murray v Union Ry. Co. of N.Y. City* and *Thompson v Grumman Aerospace Corp., supra.*). Defendant’s affidavit does not clearly demonstrate that (1) CLPA surrendered control of plaintiff’s work as WFS admits that CLPA supervisors were on premises in a supervisory capacity and (2) plaintiff considered or consented to WFS supervisors to be his boss (*Thompson v Grumman Aerospace Corp.*, 78 NY2d 557-558). Assuming it did, plaintiff’s affirmation rebutted this fact (*Giuffrida v Citibank*, 100 NY2d 81). The Court cannot resolve the issue of credibility created by conflicting affirmations upon a motion for summary judgment (*Xiang Fu He v Troon Management, Inc.*, 34 NY3d 167, 175 [2019]; *Cameron v City of Long Beach*, 297 AD2d 774).

The Court has considered the parties’ remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that plaintiff’s motion for summary judgment per CPLR § 3212 is denied without prejudice and with leave to renew upon the completion of discovery and after the filing of the note of issue (MS 001), and it is further

ORDERED that defendant’s cross-motion for summary judgment per CPLR § 3212 is denied without prejudice and with leave to renew upon the completion of discovery and after the filing of the note of issue (MS 002), and it is further

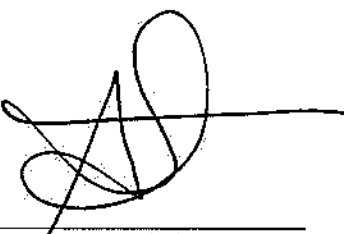
ORDERED that defendant's motion for an order pursuant to CPLR § 3025 [b] is granted and defendant shall separately file in NYSCEF a copy of the Amended Answer within 15 days of entry of this order in NYSCEF (MS 002), and it is further

ORDERED that the Amended Answer is deemed served upon plaintiff upon the filing of the Amended Answer in NYSCEF (MS 002), and it is further

ORDERED that the parties shall appear for a compliance conference in the Central Compliance Part, Courtroom 282 on **6/24/2025**.

This constitutes the decision and order of the Court.

ENTER:



Hon. Anne J. Swern, J.S.C.
Dated: 6/2/2025

For Clerks use only:
MG _____
MD _____
Motion seq. # _____