

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: June 11, 2009

505209

FRANCIS DURKEE,

Appellant,

v

MEMORANDUM AND ORDER

RAYMOND RENAUD,

Respondent.

Calendar Date: April 20, 2009

Before: Cardona, P.J., Mercure, Kavanagh, Stein and
McCarthy, JJ.

Carter, Conboy, Case, Blackmore, Maloney & Laird, P.C.,
Albany (William T. Little of counsel), for appellant.

Flink Smith, L.L.C., Latham (Paul J. Campito of counsel),
for respondent.

McCarthy, J.

Appeal from an order of the Supreme Court (Kramer, J.),
entered April 18, 2008 in Schenectady County, which, among other
things, granted defendant's motion for summary judgment
dismissing the complaint.

In 2003, the parties were both employed by Keystone Masonry
& Remodeling, Inc. Plaintiff was employed as a mason and
defendant was his boss and Keystone's president. In the course
of performing demolition work on the roof of Keystone's premises,
which was owned by defendant individually, plaintiff fell and
injured himself. He thereafter collected workers' compensation
benefits and also commenced this negligence and Labor Law action.
Supreme Court dismissed the action on the ground that it was

barred by the exclusivity provisions of Workers' Compensation Law § 29 (6). Plaintiff appeals.

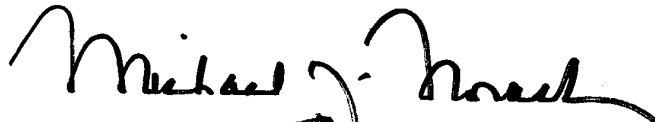
There is no dispute that both parties were employees of Keystone, that plaintiff was injured in the course of his employment with Keystone and that he collected workers' compensation benefits following his fall. Accordingly, the Workers' Compensation Law is plaintiff's exclusive remedy and he cannot maintain this action against defendant (see Macchirole v Giamboi, 97 NY2d 147, 149-150 [2001]; Heritage v Van Patten, 59 NY2d 1017, 1019 [1983]; Kinsman v McGill, 210 AD2d 659, 659-660 [1994]; St. Andrews v Lucarelli, 115 AD2d 155, 155 [1985]; see also Workers' Compensation Law § 29 [6]). Supreme Court's order should therefore be affirmed.

Plaintiff's remaining arguments are either unpersuasive or rendered academic by our holding.

Cardona, P.J., Mercure, Kavanagh and Stein, JJ., concur.

ORDERED that the order is affirmed, with costs.

ENTER:



Michael J. Novack
Clerk of the Court