[* 1]

SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS **PART 58**

Justice

KEYON WILLIAMS,

Plaintiff,

-v-

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

INDEX NO. 103455/09

MOTION DATE

MOTION SEQ. NO. 003, 004

MOTION CAL. NO.

The following papers, numbered 1 to ___ were read on this motion to ___.

	PAPERS NUMBERED
Notice of Motion/Order to Show Cause-Affidavits– Exhibits....	1, 4
Answering Affidavits Exhibits	2, 5, 6
Replying Affidavits	3, 7

CROSS-MOTION: ___ YES ✓ NO

Upon the foregoing papers, it is ordered that this motion is:

FILED

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION.

JUN 08 2012

COUNTY CLERK'S OFFICE

Dated: 6/4/12

DONNA M. MILLS, J.S.C.

Check one: ✓ FINAL DISPOSITION ___ NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58

KEYON WILLIAMS,

INDEX NO.
103455/09

Plaintiff,

- against -

THE NEW YORK CITY HOUSING AUTHORITY,

DECISION/ORDER

Defendant.

DONNA M. MILLS, J.:

Motion sequence numbers 003 and 004 are consolidated for disposition and decided as noted below.

In sequence 004, Defendant, New York City Housing Authority (the "Authority") brings this motion pursuant to CPLR §3212 dismissing plaintiff's complaint on the grounds that the plaintiff Keyon Williams solely caused his alleged accident and injuries and that the Authority is not liable as a matter of law. Plaintiff opposes the motion on the grounds that any assumption of the risk does not completely bar his recovery. In sequence 003, the Authority seeks to vacate the note of issue.

BACKGROUND

This is an action to recover monetary damage for personal injuries suffered by the plaintiff as the result of an alleged trip and fall that occurred on January 21, 2008, on a basketball court located at 2215 First Avenue within the Thomas Jefferson Houses Development. The infant teenage plaintiff, Keyon Williams, was thirteen years old at the time of the alleged accident. The plaintiff, at his examination before trial, testified in his deposition testimony that he was playing a "one-on-one" game of basketball with his older brother when he injured himself by falling on a crack that was on the playing surface.

Additionally the plaintiff testified that he had played on the subject basketball court on at least ten occasions before the date of the accident and admitted that he knew that the court was cracked for at least two years before the accident.

Applicable Law & Discussion

CPLR § 3212(b) requires that for a court to grant summary judgment, the court must determine if the movant's papers justify holding, as a matter of law, "that the cause of action or defense has no merit." It is well settled that the remedy of summary judgment, although a drastic one, is appropriate where a thorough examination of the merits clearly demonstrates the absence of any triable issues of fact (Vamattam v Thomas, 205 AD2d 615 [2nd Dept 1994]). It is incumbent upon the moving party to make a prima facie showing based on sufficient evidence to warrant the court to find movant's entitlement to judgment as a matter of law (CPLR § 3212 [b]). Once this showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). Summary judgment should be denied when, based upon the evidence presented, there is any significant doubt as to the existence of a triable issue of fact (Rotuba Extruders v Ceppos, 46 NY2d 223 [1978]). When there is no genuine issue to be resolved at trial, the case should be summarily decided (Andre v Pomeroy, 35 NY2d 361, 364 [1974]).

The Authority maintains that it is entitled to summary judgment because plaintiff assumed the risks of injuries inherent in playing an informal game of basketball on a court that he knew had been cracked for several years. The principle of primary assumption of risk extends to those risks associated with the construction of a playing field and any open

and obvious condition thereon (see Ziegelmeyer v. United States Olympic Comm., 7 N.Y.3d 893, 826 N.Y.S.2d 598, 860 N.E.2d 60; Sykes v. County of Erie, 94 N.Y.2d 912, 707 N.Y.S.2d 374, 728 N.E.2d 973; Maddox v. City of New York, 66 N.Y.2d 270, 496 N.Y.S.2d 726, 487 N.E.2d 553; Brown v. City of New York, 69 A.D.3d 893, 895 N.Y.S.2d 442). Where, as here, the risks are known by or perfectly obvious to the player, he or she has consented to them, and the property owner has discharged its duty of care by making the conditions as safe as they appear to be (see Turcotte v. Fell, 68 N.Y.2d 432, 439, 510 N.Y.S.2d 49, 502 N.E.2d 964; Morales v. Coram Materials Corp., 64 A.D.3d 756, 758, 883 N.Y.S.2d 311).

The Authority demonstrated its prima facie entitlement to judgment as a matter of law by establishing that the infant assumed the risk of injury by voluntarily participating in the basketball game despite his knowledge that doing so could bring him into contact with the open and obvious crack on the playing surface (see Trevett v. City of Little Falls, 6 N.Y.3d 884, 816 N.Y.S.2d 738, 849 N.E.2d 961; Brown v. City of New York, 69 A.D.3d at 894, 895 N.Y.S.2d 442; Ribaudo v. La Salle Inst., 45 A.D.3d 556, 846 N.Y.S.2d 209).

In opposition, the plaintiff failed to raise a triable issue of fact. Plaintiff relies on, and misapplies the holding in Trupia v Lake George Cent. School Dist. (14 NY3d 392, 927 N.E.2d 547, 901 N.Y.S.2d 127). Plaintiff contends that Trupia set forth a change in the law regarding assumption of risk that precludes an award of summary judgment in the Authority's favor. Contrary to the plaintiff's contention, Trupia, which involved an infant plaintiff who sustained injuries while allegedly engaged in unsupervised "horseplay" at his school (14 NY3d at 396), does not preclude the granting of summary judgment in the instant action. The ruling, which held that assumption of the risk was not applicable, was

narrowly tailored to apply to "horseplay," not a sports and recreational activity as in the present case.

Accordingly, it is

ORDERED that the Authority's motion seeking summary judgment dismissing the Complaint is granted; and it is further

ORDERED that the Authority's motion to vacate the note of issue is denied as moot; and it is further.

ORDERED that the Clerk is directed to enter judgment in favor of the Authority.

Dated: 6/4/12

ENTER:

J.S.C.