

Allison v City of New York

2006 NY Slip Op 30714(U)

October 23, 2006

Supreme Court, New York County

Docket Number: 104287/06

Judge: Marilyn Shafer

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. MARILYN SHAFER
Justice

PART 62

**ASHLEY ALLISON, as Father and Natural Guardian of
Infant, MEGAN ALLISON,**

Plaintiff,

-against-

INDEX NO. 104287/06

MOTION DATE

MOTION SEQ. NO. 001

**THE CITY OF NEW YORK, THE NEW YORK CITY
DEPARTMENT OF EDUCATION, THE NEW YORK
CITY SCHOOL CONSTRUCTION AUTHORITY,
JOEL I. KLEIN, individually and in his official
capacity as Chancellor of THE NEW YORK CITY
DEPARTMENT OF EDUCATION and Chair of
THE NEW YORK CITY SCHOOL CONSTRUCTION
AUTHORITY, PUBLIC SCHOOL 215 MORRIS H. WIESS
SCHOOL, COMMUNITY SCHOOL DISTRICT 21,
MICHELLE FRATTI, individually and in her official
capacity as District Superintendent, GAIL FEUER,
individually and in her official capacity as Principal,**

Defendants.

FILED
OCT 27 2006
NEW YORK
COUNTY CLERK'S OFFICE

The following papers, numbered 1 to 3, were read on this motion:

PAPERS NUMBERED

Notice of Motion — Affidavits — Exhibits

1

Affirmation in Opposition — Affidavits— Exhibits

2

Replying Affidavits

3

Cross-Motion: Yes No

**Upon the foregoing papers, it is ordered that defendant New York City School
Construction Authority's motion is granted.**

This motion stems from an action to recover damages for injuries sustained by plaintiff's daughter, Megan Allison, when she tripped and fell on a defective and broken concrete sidewalk located on the West side of P.S. 215. Plaintiff contends that he had been aware of the defective condition since 2001 and that he had made several complaints to the school's PTA. Plaintiff further contends that he made complaints to the superintendent of Region 7 and defendant New York City School Construction Authority ("SCA"). The SCA is "an entity created by the State of New York to be the single accountable organization to plan, design, construct and report on all capital projects for defendant New York City Department of Education."

The SCA brings this motion to dismiss pursuant to CPLR §3211 alleging that the defective condition on the sidewalk was not caused or created by it. The SCA further alleges that the work the SCA was contracted to perform at the school involved the installation of a new roof, roof slab, masonry restoration and carpentry work, not sidewalk work.

In opposition, plaintiff asserts that SCA's motion must be denied because it is too premature to determine "the extent of liability of the SCA, that the SCA had actual notice of the damage, and that the SCA has failed to put forth sufficient evidence that they were not responsible for the damage or the repair of the defects that caused Megan's injuries." Plaintiff further asserts that the SCA had actual notice of the defective condition since the Building Condition and Assessment Survey of P.S. 215 issued in 2004 by the SCA rated the sidewalks of the school as "poor" and listed the sidewalks as "damaged," "deteriorated," and "missing sections."

In a CPLR §3211 motion to dismiss, the factual allegations of the complaint are deemed true and the affidavits submitted on the motion are considered only for the limited purpose of determining whether the plaintiff has stated a claim, not whether plaintiff has one (*Wall Street*

Associates v Brodsky, 257 AD2d 526 [1st Dept 1999]). It is well settled that a pleading shall be liberally construed and will not be dismissed for insufficiency merely because it is inartistically drawn (*Foley v D'Agostino*, 21 AD2d 60 [1st Dept 1964]) The relevant inquiry is whether the requisite allegations of any valid cause of action cognizable by the state courts can be fairly gathered from the four corners of the complaint (*Id.*). “Defects shall be ignored if a substantial right of a party is not prejudiced” (*Id.* at 65).

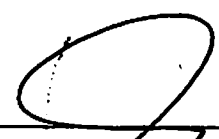
Education Law §2554(4) and New York City Charter, chapter 20, §521(a) provide that the care, custody, and control of all school property is the responsibility of the New York City Board of Education (*see Goldes v City of New York, et al*, 19 AD3d 448 [2d Dept 2005]). Here, there is no evidence that the SCA maintained, repaired or had any supervisory or control over the sidewalks at the school (*Remigo v City of New York, et al*, 291 AD2d 262 [1st Dept 2002]). In his complaint, plaintiff merely alleges in general and conclusory language that the SCA was negligent in “repairing various areas of P.S. 215 from as early as April 2004 and the repairs are still ongoing.” However, the SCA has, through the affidavits of the Project Officer of the SCA and the office manager of Graystone Contracting (“Graystone”), the company contracted by the SCA to perform work at P.S. 215, that the only work performed by the SCA, through Graystone, was the installation of a new roof, roof slab, masonry restoration and carpentry work. These affidavits demonstrate that the SCA neither created nor caused the defect through its repair work. Even assuming the truth of plaintiff’s allegations, as this Court is obligated to do on a motion to dismiss, plaintiff has failed to state a cause of action against the SCA. Accordingly, the SCA’s motion to dismiss is granted.

For the aforementioned reasons, it is hereby

ORDERED, that the SCA’s motion is granted; and it is further

ORDERED that the complaint and all cross-claims against the SCA is dismissed with costs and disbursements to SCA as taxed by the Clerk of the Court; and it is further ORDERED that the rest of the action is severed and shall continue; and it is further ORDERED that the Clerk of the Court is directed to enter judgment accordingly. This reflects the decision and order of this Court.

Dated: October 23, 2006



J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

HON. MARILYN SHAFER, JSC

FILED
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