Brown v North Albany Academy
2013 NY Slip Op 32057(U)
September 5, 2013
Supreme Court, Albany County
Docket Number: 914-12
Judge: Joseph C. Teresi

SUPREME COURT
STATE OF NEW YORK COUNTY OF ALBANY

SHAKIMA BROWN, Individually and
as Parent and Natural Guardian of
MARQUI CHANDLER, an Infant,

Plaintiffs,

DECISION and ORDER
INDEX NO. 914-12
RJI NO. 01-12-107912

-against-

NORTH ALBANY ACADEMY, THE
CITY SCHOOL DISTRICT OF ALBANY
AND THE BOARD OF EDUCATION OF
THE CITY SCHOOL DISTRICT OF ALBANY,

Defendants.

Supreme Court Albany County All Purpose Term, August 8, 2013
Assigned to Justice Joseph C. Teresi

APPEARANCES:

LaFave Wein & Frament, PLLC
(Jason A. Frament, Esq.)
Attorneys for Plaintiffs
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The Mills Law Firm LLP.
(Christopher K. Mills, Esq.)
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TERESI, J.:

Defendants move for summary judgment pursuant to CPLR 3212 and seek the dismissal of the complaint. The plaintiffs oppose the motion and maintain questions of fact preclude the granting of summary judgment.

The infant plaintiff was injured in an accident involving a bathroom door on May 8, 2011 at North Albany Academy, an elementary school in the City of Albany School District ("District"). The infant was a five year old kindergarten student at the time of the incident. During a music class, the infant sought permission from his teacher to use the restroom. When the child finished using the restroom, he opened the bathroom door and started to walk back to the classroom. The bathroom door was recently installed as a part of a major renovation of the school. The door has an automatic door closer which closes the door when a person exits the restroom. When the child was exiting the restroom, he placed his right middle finger in the hinge side of the bathroom door as it was closing. As a result, the child sustained injury to the tip of his finger.

The plaintiff commenced this action alleging two causes of action. The first action alleges the District was negligent as it failed to provide adequate supervision of the child while he was using the bathroom. The plaintiffs claim a hall monitor employed by the District did not escort the child to the restroom in violation of school policy. The plaintiffs also assert a claim for premises liability and maintain the door was dangerous and defective. The plaintiffs claim the District had actual and constructive notice of the defect. The plaintiffs contend another child was injured at the school in February 2011 when a door closed on her fingers causing her injury. The plaintiffs claim the District had notice of the dangerous condition of the doors as they lacked protective guards. The plaintiffs allege the District took no action to correct the doors after the other child was injured.

On a motion for summary judgment, the movant must establish by admissible proof, the right to judgment as a mater of law. (Alvarez v Prospect Hospital, 68 NY2d 320 [1986]). The burden shifts to the opponent of the motion to establish by admissible proof, the existence of genuine issues of fact. (Zuckerman v City of New York, 49 NY2d 557 [1980]). It is well established that on a motion for summary judgment, the court's function is issue finding, not issue determination. (Barr v. County of Albany, 50 NY2d 247 [1980], and all evidence must be viewed in the light most favorable to the opponent to the motion. (Davis v. Klein, 88 NY2d 1008 [1996]).

In moving for summary judgment, defendant bore the initial burden of establishing that it maintained its premises in a reasonably safe condition, had no actual or constructive knowledge of the condition and did not create the allegedly dangerous condition. (Musilli v. Kohler Co., 50 AD3d 1600 [4th Dept. 2008]). "A defendant moving for summary judgment has the initial burden of coming forward with admissible evidence such as affidavits by persons having knowledge of the facts . . . and showing the cause of action has no merit." (GTF Mktg. v. Colonial Aluminum Sales, 66 NY2d 965 [1985]). Failure to make such showing requires denial of the motion regardless of the sufficiency of the opposing papers. (Winegard v. New York Univ. Med. Center, 64 NY2d 851 [1985]).

While a school district is not an insurer of the safety of its students since it cannot reasonably be expected to continuously supervise and control all of their movements and activities, it has a duty to adequately supervise the students in its charge and will be held liable for foreseeable injuries proximately related to the absence of adequate supervision. (Mirand v. City of New York, 84 NY2d 44 [1994]. In addition, when a spontaneous and unintentional accident happens in just a few moments, Courts have held that no amount of supervision, however intense, can prevent a resulting injury. (Bellinger v. Ballston Spa Cent. School Dist., 57 AD3d 1296 [3rd Dept. 2008]).

A plaintiff claiming negligent supervision must demonstrate both that the defendant breached its duty to provide adequate supervision under this standard, and that this failure was the proximate cause of the plaintiff's injuries. (Mirand v. City of New York, 84 NY2d at 49). Defendant's motion for summary judgment on the cause of action for negligent supervision is granted. The principal of the school maintains the District does not have a policy requiring kindergarten students to be escorted to the restroom. In addition, there is no requirement for direct adult supervision while the kindergarten students use the bathroom. The District does not have a duty to escort every kindergarten student to the restroom. It would be impossible to maintain an escort policy considering the number of students and the frequency of bathroom visits. Even if the child was escorted to the restroom during this incident, no supervision could have prevented the injury when the record

reveals the plaintiff placed his finger in the door jam when the door was closing. From the facts presented, the District has established its prima facie entitlement to summary judgment as a matter of law on the issue of negligent supervision. (O'Brien v. Sayville Union Free School District, 87 AD3d 569 [2nd Dept. 2011]

Plaintiffs' second cause of action alleges the bathroom door was dangerous and defective and the defendants had notice of its condition. Plaintiffs maintain the door did not have a "hinge guard" that would allow for a safe closure of the door or a metal kick plate on the base of the door. The plaintiffs claim the defendants installed door hinge guards after the accident which indicates the doors were in fact dangerous. Plaintiffs claim the defendants had actual notice of the dangerous condition of the doors as another child sustained an injury to her fingers in a similar incident a few months earlier. The defendants allege the bathroom door complied with industry standards and the New York State Building Code. The defendants allege the door was maintained in a reasonably safe condition. In addition, the defendants contend hinge guards are not required by the New York State Building Code.

To establish a prima facie case of negligence, the plaintiff must demonstrate (1) that the defendant owed her a duty of reasonable care, (2) a breach of the duty, and (3) a resulting injury proximately caused by the breach. (Solomon v. City of New York, 66 NY2d 1026 [1985]). An owner of realty owes a duty to maintain the property in a reasonably safe condition. (Basso v. Miller, 40 NY2d 233 [1976]) and one who is injured as a result of a defect must prove that the property owner had either actual or constructive notice of the defect in order to recover. (Early v. Hilton Hotels Corp., 73 AD3d 559 [1st Dept. 2010]). Plaintiff must demonstrate that defendant either created the condition by its own affirmative act, was aware of a specific condition yet failed to correct it, or was aware of an ongoing and recurring unsafe condition which regularly went unaddressed. (Mazerbo v. Murphy, 52 AD3d 1064 [3rd Dept. 2008], lv dismissed 11 NY3d 770 [2008]). To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of

time prior to the accident to permit a defendant to discover and remedy it. (Gordon v. American Museum of Natural History, 67 NY2d 836 [1986]).

Defendants' motion for summary judgment is denied. This Court is unable to determine as a matter of law that the defendants are entitled to summary judgment. There are questions of fact that cannot be resolved by summary judgment. The plaintiffs indicate another child injured her fingers in a door at the same elementary school in February 2011. Viewing the evidence presented in a light most favorable to the plaintiffs, the Court finds the plaintiffs raised questions of fact regarding the condition of the bathroom door and whether the District had notice of an alleged defect. (Cerniglia v. Loza Rest. Corp., 98 AD3d 933 [2nd Dept. 2012]).

"Whether a dangerous or defective condition exists on the property of another to create liability depends on the peculiar facts and circumstances of each case and is generally a question of fact for the jury." (Trincere v. County of Suffolk, 90 NY 2d 976 [1997]).

This Decision and Order is being returned to the attorney for the defendants. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel is not relived from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York
September 5, 2013

Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion dated July 11, 2013;
2. Affirmation of Christopher K. Mills, Esq. dated July 11, 2013 with attached exhibits A-N;
3. Affidavit of Lesley A. Brown dated June 19, 2013;
4. Affidavit of Joseph C. Roblee dated July 8, 2013 with attached exhibits A & B;
5. Affidavit of David Ksanznak dated July 10, 2013 with attached exhibit A;
6. Defendants' Memorandum of Law dated July 11, 2013;
7. Plaintiffs' Memorandum of Law dated July 29, 2013;
8. Affidavit of Conrad Hoffman, dated July 31, 20132 with attached exhibits A-D;
9. Affirmation of Jason A. Frament, Esq. dated August 1, 2013 with attached exhibits A & B;
10. Affirmation of Christopher K. Mills, Esq. dated August 5, 2013 with attached exhibit A.