SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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JUDITH WILSON **C - 2**

Plaintiff,

Hon. Thomas P. Aliotta

- against -

DECISION and ORDER

NEW YORK CITY BOARD OF EDUCATION and THE CITY OF NEW YORK,

Index No. 100979/2014
Motion No. 2612 - 001

Defendants.

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The following papers numbered 1 to 3 were fully submitted on the 16th day of December, 2015.

Papers Numbered

Defendants' Notice of Motion to Dismiss the Complaint Pursuant to CPLR 3211, with Supporting Papers (dated July 10, 2015) 1

Plaintiff's Affirmation in Opposition (dated October 30, 2015) 2

Defendants' Reply Affirmation (dated December 11, 2015) 3

Upon the foregoing papers, defendants' motion to dismiss the complaint, subsequently converted into one for summary judgment is granted.

This personal injury action arises out of an incident that occurred on October 3, 2013, at approximately 4:00 p.m., on the grounds of Public School 3, located at 80 South Goff Avenue, Staten Island, New York, where plaintiff Judith Wilson (hereinafter, "plaintiff") was employed as the Principal. In the complaint, it is alleged that Ms. Wilson sustained trauma, injury and damage to her left hand and wrist when

she was attacked and assaulted by three students at the school. More specifically, plaintiff claims that the New York City Board of Education (hereinafter, "BOE"), her employer, and The City of New York (hereinafter, the "City"), in its capacity as the owner of the premises (P.S. 3), (1) was careless and negligent in the management, control, supervision and operation of said premises, (2) caused and/or created a dangerous and unsafe condition to exist at those premises, and (3) failed to provide a safe environment for the students and staff.

Additionally, plaintiff asserts in her Notice of Claim dated December 30, 2013, that the City of New York and its agents and employees were negligent, *inter alia*, in failing to (1) transfer the three offending students out of her school despite their history of violent behavior towards the plaintiff and others in the school, (2) foresee that these students presented a danger notwithstanding having actual and constructive notice of their prior violent behavior, and (3) implement adequate security measures prior to the incident. It is further alleged in the Notice of Claim that the City created "a 'special relationship' with the plaintiff by assuming to act on her behalf and failing to take reasonable action to prevent the incident...which was foreseeable".

Defendants' motion to dismiss the complaint was converted into one for summary judgment upon notice to the parties pursuant to CPLR 3211 (c).

In support of summary judgment, the municipal defendants maintain that, as evidenced by the deposition testimony of plaintiff and the school safety agent (Stephen Omjecki), who was present at the time of the occurrence, neither the BOE nor the City

had a "special relationship" with plaintiff that would "trigger" a special duty of protection. More specifically, it is alleged that the BOE and the City are immune from liability for any alleged negligence and/or failure to protect plaintiff from harm in view of the absence of any evidence indicating that Safety Officer Omjecki or any other municipal personnel made an affirmative promise to protect the plaintiff, *i.e.*, that based on the undisputed facts in this case, plaintiff cannot demonstrate that she was owed a special duty of protection.

Defendants further maintain that the record is devoid of any evidence that either or both were negligent in their proprietary role as to the ownership, operation, control or maintenance of the subject premises. In this regard, it is argued that the particular acts of negligence alleged herein do not amount to a failure to maintain the premises in a reasonably safe condition, but rather, a failure to protect plaintiff from assaultive contact with a student, which necessarily involves the performance of a governmental function. Specifically, the municipal defendants maintain that they are immune from liability for ordinary negligence in the absence of a special duty, the presence of which has not been established.

In opposition, plaintiff does not allege that Safety Officer Omjecki made any direct assurances to protect her from any acts of violence perpetrated by the students in question, but rather, that he assumed and breached a special duty by *failing* to step between plaintiff and the offending student in order to prevent her injury. More particularly, plaintiff contends that Safety Officer Omjecki failed to act in accordance

with his "extensive training and 33 years of job experience", which would have required him to "step between" Ms. Wilson and the aggressive students, thereby "preempting the physical altercation" that ensued. Accordingly, plaintiff maintains that while the school safety officer never "expressly assumed a duty to protect [her]" from the students, "he did so through his inaction" in the face of foreseeable violence. In support of this contention, plaintiff relies on the report of a purported expert in educational administration, Dr. Frank Marlow, who concludes that Safety Officer Omjecki breached various standards of care that have been implemented by the NYPD School Safety Division, including, but not limited to, his failure to (1) intervene in a timely manner; (2) issue a timely call for "back-up"; and (3) assist in controlling the egregious behavior of the offending students. Additionally, plaintiff claims that Omjecki "impliedly assumed" a special duty when he asked her at the time of the incident what "she wanted done regarding the unwieldy children".

Finally, in a further attempt to convince this Court that the municipal defendants owed plaintiff a "special duty" born of a "special relationship" between themselves and plaintiff, she asserts (in an arguably self-serving affidavit) that, among other things, she (1) feared for her physical well-being and asked Officer Omjecki for assistance in handling the emergent situation, (2) relied on Officer Omjecki to keep the students under control, and (3), as such, she refrained from contacting the NYPD due to her confidence in the safety officer's ability to "diffuse" the situation. According to plaintiff, the students in question had been the subject of prior serious disciplinary

proceedings that arose from multiple incidents of egregious misconduct, and had been the subjects of numerous suspension hearings. Plaintiff further maintains that although she (1) properly documented each such incident "in multiple forms", in accordance with the BOE's official format for reporting same, and (2) notified the Superintendent by email and telephone calls "upwards of 10 times" about this misbehavior, the BOE failed to relocate these students despite her repeated requests to do so.

Contrary to the omnibus nature of plaintiff's contentions, it is clear that the gravamen of her complaint involves defendants' failure to provide proper security. In this regard, it is well established that "[a] school district may not be held liable for the negligent performance of its governmental function of supervising children in its charge, at least in the absence of a special duty to the person injured. Although a school district owes a special duty to [properly supervise] its minor students, that duty does not extend to teachers, administrators, or other adults on or off school premises" (Brumer v City of New york, 132 AD3d 795, 796 [internal citations omitted]; *see* Dinardo v City of New York, 13 NY3d 872, 874; Thomas v New York City Dept. of Educ., 124 AD3d 762).

"With regard to teachers, administrators, or other adults on or off school premises, [it is well established that] a special relationship with a municipal defendant can be formed in [one of the following] three ways: (1) when the municipality violates a statutory duty enacted for the benefit of a particular class of persons of which plaintiff is a member; (2) when it voluntarily assumes a duty that generates justifiable reliance by

the person who benefits from the duty; or (3) when the municipality assumes positive direction and control in the face of a known, blatant and dangerous safety violation" (Brumer v City of New York, 132 AD3d at 796 [internal quotation marks and citations omitted]).

Here, it is the Court's opinion that the City and its BOE have established their prima facie entitlement to judgment as a matter of law by demonstrating that they did not owe plaintiff a special duty (*see* Brumer v City of New York, 132 AD3d at 796-797; Thomas v City of New York, 124 AD3d at 763). In opposition, plaintiff has failed to raise a triable issue of fact (*see* Serby v New York City Dept. of Educ., __ AD3d __, 2015 NY Slip Op 09088; Richline Group, Inc. v City of Mount Vernon, 118 AD3d 772; Weisbecker v West Islip Union Free Sch. Dist., 109 AD3d 657, 658; Jerideau v Huntington Union Free School Dist., 21 AD3d 992, 993; *see also* Pelaez v Seide, 2 NY3d 186).

Pertinently, it is clear that the municipal defendants made no affirmative promise of protection to the plaintiff. In fact, she has conceded as much. As for her contention that the school safety officer's negligence in carrying out his duties implicitly gave rise to a special duty, it has been held that "the mere provision of security at a [] school does not give rise to a special duty of protection" (*see* Weisbecker v West Islip Unuin Free Sch. Dist., 109 AD3d at 658; Jerideau v Huntington Union Free School Dist., 21 AD3d at 993). Moreover, it is undisputed that the students in question were "running around, punching and scaring the other students [in the auditorium during dismissal]",

and that plaintiff asked the safety officer for assistance in "handling the situation". While she further claims to have relied on the ability of the safety officer to prevent her injury, and maintains that she specifically asked him to "get the students away from her", he failed to respond with any express promise or direct assurance of protection. Moreover, it is undisputed that plaintiff's injury did not occur until she followed the students outside the building in an attempt "to get them under control". In short, plaintiff has failed to allege such facts as would give rise to a special duty (*see* Serby v New York City Department of Education, __ AD3d __, 2015 NY Slip Op 09088).

Inasmuch as no special duty existed, the Court need not consider whether, in failing to transfer the three students, the BOE was performing a discretionary governmental function, thereby cloaking both it and the City with a governmental immunity defense (*see* Valdez v City of New York, 18 NY3d 69, 75-76; Dinardo v City of New York, 13 NY3d 872, 874; Brumer v City of New York, 132 AD3d at 797). In any event, defendants' alleged breach of a duty of care towards plaintiff by failing to remove these three violent students from plaintiff's school, is factually and legally insufficient to raise a triable issue of fact regarding the existence of any special relationship between the principal and the municipal defendants. This failure is fatal to plaintiff's case (*see* Thomas v City of New York, 124 AD3d at 763).

Accordingly, it is

WILSON vs. NEW YORK CITY BOARD OF EDUCATION

ORDERED, that defendants' motion for summary judgment dismissing the complaint is granted, and the complaint is hereby dismissed; and it is further

ORDERED, that the Clerk enter judgment accordingly.

ENTER,

Dated: FEB 2 6 2016

J.S.C.
HON. THOMAS P. ALIOTTA
JUSTICE OF THE SUPREME COURT