SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

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YONG HUA ZHOU, individually, and as the natural mother and legal guardian of BRYAN HUANG, an infant under the age of 16 years,

Plaintiff,

-against-

CHINATOWN MANPOWER PROJECT, INC. d/b/a CAREER MOBILITY PARTNERSHIP, and JOHN DOE, whose name is fictitious, as it is presently unknown, but is a proper party to this action,

Defendants.

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DECISION/ORDER

Index no. 159420/2015

Mot Seq. 001

HON. CAROL R. EDMEAD, J.S.C.:

MEMORANDUM DECISION

This is an action for personal injury. Defendant, Chinatown Manpower Project, Inc., d/b/a Career Mobility Partnership ("Defendant"), now moves pursuant to CPLR 3212 for summary dismissal of the complaint ("Complaint") of plaintiff, Yong Hua Zhou, individually and as the legal guardian of Bryan Huang ("infant plaintiff"). an infant under the age of 16 years ("Plaintiff").

Factual Background

On December 14, 2013, the infant plaintiff was injured when another student ("E.Y.") allegedly pushed him to the ground. Defendant is a Chinese School, and the incident allegedly took place in a classroom located within Defendant's premises. Plaintiff commenced this negligence action against Defendant to recover damages for the personal injuries the infant plaintiff sustained as a result of the incident. Plaintiff alleges,

inter alia, that Defendant failed to provide adequate supervision of the classroom and was aware of E.Y.'s violent behavior.

Defendant's Motion

In support of its motion, Defendant initially argues that it did not have notice of E.Y.'s alleged violent history. Defendant argues that the deposition testimony of Wei Jiang Shi ("Shi"), the Saturday school principal for Defendant for nineteen years, demonstrates that there is no evidence that Defendant's employees witnessed or received complaints of E.Y.'s alleged violent behavior prior to the incident or that he exhibited violent behavior in the past. Next, Defendant argues that Plaintiff fails to establish proximate cause, since the incident was spontaneous and unforeseeable. Defendant also argues that additional supervisory staff in the lunchroom would not have prevented the incident.

Plaintiff's Opposition

In opposition, Plaintiff argues that E.Y. was a known troublemaker. Plaintiff submits the affidavits of the infant plaintiff and his brother, Arvin Huang ("A.H"), which state that they observed E.Y. "bother and harass" students on prior occasions, in the presence of Defendant's employees. Plaintiff further argues that the incident was foreseeable and not unexpected, since the confrontation between the infant plaintiff and E.Y. lasted approximately one minute to one minute and a half before the alleged attack. Additionally, Plaintiff argues that there were no teachers, teacher's aids, or any other adults in the room at the time of the incident, which violated the Defendant's internal rules that an employee be present inside the classroom during lunch.

Defendant's Reply

In reply, Defendant argues that the infant plaintiff's statement that E.Y. bothered him in the past is insufficient to give rise to a finding of negligent supervision because it would not constitute prior similar conduct to the incident. Next, Defendant argues that the infant plaintiff's affidavit should not be considered, since it is self-serving and inconsistent with his prior testimony. Defendant also argues that the portion of A.H.'s affidavit addressing how long it took for the incident to occur or whether there was adult supervision in the classroom at the time of the incident may not be considered since he did not arrive to the classroom until after the incident.

Discussion

In order to find that a school has breached its duty to provide adequate supervision in the context of injuries caused by the acts of fellow students, it must be shown that the school "had sufficiently specific knowledge or notice of the dangerous conduct which caused injury; that is, that the third-party acts could reasonably have been anticipated" (*Mirand v. City of New York*, 84 N.Y.2d 44, 49 [1994]). Actual or constructive notice to the school of prior similar conduct is generally required because school personnel cannot reasonably be expected to guard against all of the sudden, spontaneous acts that take place on a daily basis among students (*id.*).

Defendant makes a *prima facie* showing that it lacked notice of the dangerous conduct that caused the infant plaintiff's injury. The infant plaintiff testified that he had problems with E.Y. on one or two prior occasions, but that "[E.Y.] was just saying things," which did not upset the infant plaintiff, and that he "didn't really pay much attention to them" (Defendant's MOL, Ex. E, Huang Trans., 37:16-24). More importantly, Shi testified that there were no prior physical altercations or conflicts

involving the infant plaintiff or E.Y. and that E.Y. had no reported behavioral problems (*id.*, Ex. F, Shi Trans., 52:11-53:9). Thus, Defendant could not have reasonably foreseen the alleged attack on the infant plaintiff.

Plaintiff's opposition fails to raise an issue of fact. Initially, the portion of the infant plaintiff's affidavit addressing the length of the time in which incident occurred does not contradict his prior testimony, as his testimony does not address that issue. Be that as it may, Plaintiff's argument that E.Y. harassed and bothered the infant plaintiff and other students in the past is insufficient to place Defendant on notice of the specific alleged conduct that caused the infant plaintiff's injuries (*see Baker v. Trinity-Pawling Sch.*, 21 A.D.3d 272, 274 [1st Dept 2005]). Accordingly, the motion of Defendant for summary dismissal of the Complaint is granted.

CONCLUSION

Accordingly, it is hereby

ORDERED that the Complaint is dismissed against Chinatown Manpower Project, Inc. d/b/a Career Mobility Partnership. It is further

ORDERED that the Clerk enter judgment accordingly. It is further

ORDERED that the case is severed and the remaining parties shall appear for an in-court conference to on March 13, 2018 at 2:30 p.m. it is further

ORDERED that counsel for defendants Chinatown Manpower Project, Inc. d/b/a Career Mobility Partnership shall serve a copy of this order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: February 9, 2018

Hon. Carol Robinson Edmead, J.S.C