Amaya v Middle Country Cent. Sch. Dist.
2018 NY Slip Op 30320(U)
January 23, 2018
Supreme Court, Suffolk County
Docket Number: 14-16421
Judge: William G. Ford
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[* 1]

SHORT FORM ORDER

INDEX No. 14-16421
CAL. No. 17-00791OT

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 38 - SUFFOLK COUNTY

PRESENT:

Hon. WILLIAM G. FORD
Justice of the Supreme Court

MOTION DATE 9-28-17
ADJ. DATE 11-2-17
Mot. Seq. #: 001 - MG; CASEDISP

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ELIEZER AMAYA, an Infant, by his mother and natural guardian, SOFIA AMAYA, and SOFIA AMAYA, Individually,

Plaintiffs,

- against -

MIDDLE COUNTRY CENTRAL SCHOOL DISTRICT,

Defendant.

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Upon the following papers numbered 1 to 31 read on this motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers __; Notice of Cross Motion and supporting papers 1-26 ; Answering Affidavits and supporting papers 27; Replying Affidavits and supporting papers 28-31; Other ___; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the defendant's motion for summary judgment dismissing the complaint is **granted**.

The infant plaintiff, Eliezer Amaya, and his mother, Sofia Amaya (collectively the "plaintiffs"), commenced this action to recover damages for personal injuries that Eliezer allegedly sustained when he was a student at Dawnwood Middle School in the defendant Middle Country Central School District (the "School District"). The plaintiffs allege that on October 17, 2013, while Eliezer was in the boys locker room at Dawnwood Middle School, he was injured by a protruding metal object that was on a locker. The plaintiff further alleges that School District, *inter alia*, failed to supervise the locker room; failed to inspect the lockers; failed to warn Eliezer that there was protruding metal on the locker; and failed to resolve a defective condition. The plaintiffs allege that the School District's failures were the proximate cause of Eliezer's injuries.

The School District now moves for summary judgment dismissing the complaint. The School District argues, *inter alia,* that the accident was "sudden and spontaneous"; therefore, it could not have been anticipated or prevented. The School District further contends that there was no behavior that required "control[] or supervis[ion]" under the circumstances, and that the subject locker was not defective. The plaintiffs oppose the School District's motion, arguing, *inter alia*, that the injury to Eliezer was foreseeable, and that School District breached its duty of care to him. In support of its motion for summary judgment, the School District submits the pleadings, the transcripts of hearings pursuant to General Municipal Law § 50-h ("50-h hearing"), the plaintiffs' deposition transcripts, and the affidavits of two School District employees.

Eliezer's testimony at his 50-h hearing and at his deposition was essentially the same. Eliezer testified that the incident occurred when he was in the sixth grade at Dawnwood Middle School, and while he was participating in gym class. Eliezer's class, which had approximately 25 to 30 students, participated in gym activities with two other classes; however, each class had its own teacher. When gym class ended, Eliezer went to his assigned locker in the boys locker room and changed out of his gym clothes. He testified that there were no teachers inside of the locker room at that time, but there were teachers directly outside in the gym area. There was no "horseplay" by other students inside of the locker room. When Eliezer finished changing his clothing, he walked across the locker room to meet a friend. While walking, a group of other students began walking toward Eliezer, and he shifted to the right to allow them to pass. As a result, Eliezer's right leg came into contact with the metal lock hook of a locker; he felt a "pinch," and fell. There were no students in the area where Eliezer fell. Eliezer testified that he had walked by the subject locker in the past without incident. Eliezer then stood, ignored the pain in his leg, and went to his "homeroom" class. On his way to homeroom, Eliezer saw a teacher, but did not tell that teacher that he was injured. A friend observed blood on Eliezer's jeans and alerted the homeroom teacher, who sent Eliezer to the school nurse. The school nurse cleaned the wound on Eliezer's leg, and applied a bandage. Eliezer's mother picked him up from school, and took him to a hospital. According to Eliezer, he was told that another student was also hurt by a locker. Eliezer took pictures of the locker room and the subject locker, and he testified that at the time of the accident, the locker was tied with a zip tie, which the teachers used to keep the lockers closed when they were not in use.

Eliezer's mother, Sofia Amaya, testified that she attempted to speak to the School District about Eliezer's injuries, but was unsuccessful. She was not able to speak to the school nurse or the school's principal. Sofia did not see the locker or the locker room where the incident occurred. Sofia and her husband transported Eliezer to the hospital and Eliezer received six or seven stitches.

In his affidavit, Eliezer's gym teacher Adam Barrett averred that he was supervising the locker room on the day that the incident occurred, while another teacher supervised the gym area. He asserted that there was no "horseplay and the students were well behaved," and that Eliezer did not notify him that he was injured. Barrett further averred that he was not aware of any other similar incident.

Dominick DiSalvo averred that he was the chief custodian at Dawnwood Middle School, and he had worked at the school for 20 years. He stated that the lockers were approximately 20 years old, and that he was not aware of any other similar incidents involving lockers at the school.

On a motion for summary judgment the movant bears the initial burden and must tender evidence sufficient to eliminate all material issues of fact (***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 487 NYS2d 316 [1985]). Once the movant meets this burden, the burden then shifts to the opposing party to demonstrate that there are material issues of fact; mere conclusions and unsubstantiated allegations are insufficient to raise any triable issues of fact (*see* ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]; ***Perez v Grace Episcopal Church***, 6 AD3d 596, 774 NYS2d 785 [2004]). As the court's function on such a motion is to determine whether issues of fact exist, not to resolve issues of fact or to determine matters of credibility, the facts alleged by the opposing party and all inferences that may be drawn are to be accepted as true (*see* ***Roth v Barreto***, 289 AD2d 557, 735 NYS2d 197 [2d Dept 2001]; ***O'Neill v Town of Fishkill***, 134 AD2d 487, 521 NYS2d 272 [2d Dept 1987]).

To prove a prima facie case of negligence, a plaintiff must demonstrate the existence of a duty, a breach of that duty, and that the breach of such duty was a proximate cause of his or her injuries (*see* ***Pulka v Edelman***, 40 NY2d 781, 390 NYS2d 393 [1976]; ***Engelhart v County of Orange***, 16 AD3d 369, 790 NYS2d 704 [2d Dept 2005]; ***Eisman v State***, 70 NY2d 175, 187, 518 NYS2d 608 [1987]; *see also* ***Espinal v Melville Snow Contrs.***, 98 NY2d 136, 746 NYS2d 120 [2002]). Although juries determine whether and to what extent a particular duty was breached, it is for the courts to decide in the first instance whether any duty exists and, if so, the scope of such duty (***Church v Callanan Indus.***, 99 NY2d 104, 110-111, 752 NYS2d 254 [2002]; ***Darby v Compagnie Natl. Air France***, 96 NY2d 343, 347, 728 NYS2d 731 [2001]; ***Waters v New York City Hous. Auth.***, 69 NY2d 225, 229, 513 NYS2d 356 [1987]).

The School District established its prima facie entitlement to judgment as a matter of law with respect to the plaintiffs' claim that negligent supervision by school personnel was the proximate cause of the accident. "Schools are under a duty to adequately supervise the students in their charge and they will be held liable for foreseeable injuries proximately related to the absence of adequate supervision" (***Mirand v City of New York***, 84 NY2d 44, 49, 637 NE2d 263, 266 [1994]; *see* ***Jake F. v Plainview-Old Bethpage Cent. Sch. Dist.***, 94 AD3d 804, 805, 944 NYS2d 152, 153 [2d Dept 2012]). Nevertheless, schools are not insurers of safety; they cannot reasonably be expected to continuously supervise and control all movements and activities of students (***Mirand v City of New York***, 84 NY2d 49; ***Benavides v Uniondale Union Free Sch. Dist.***, 95 AD3d 809, 810, 943 NYS2d 209, 211 [2d Dept 2012]). "Where an accident occurs in so short a span of time that even the most intense supervision could not have prevented it, any lack of supervision is not the proximate cause of the injury" (***Swan v Town of Brookhaven***, 32 AD3d 1012, 1013, 821 NYS2d 265, 267 [2d Dept 2006]; ***Ronan v School Dist. of City New Rochelle***, 35 AD3d 429, 430, 825 NYS2d 249 [2d Dept 2006]; ***Convey v City of Rye School Dist.***, 271 AD2d 154, 160, 710 NYS2d 641 [2d Dept 2000]). Additionally, "[e]ven assuming there is a question of fact as to the adequacy of supervision, 'liability for any such negligent supervision does not lie absent a showing that it constitutes a proximate cause of the injury sustained' " (***Mayer v Mahopac Cent. School Dist.***, 29 AD3d 653, 654, 815 NYS2d 189, 191 [2d Dept 2006], quoting ***Lopez v Freeport Union Free School Dist.***, 288 AD2d 355, 356, 734 NYS2d 97 [2d Dept 2001]).

Here, Eliezer testified that when he was walking in the locker room, he moved to the right so that other students could pass by him. That movement caused his leg to come into contact with the

metal lock hook of one of the lockers, resulting in injury. Eliezer's sudden and unanticipated movement was an "event which no amount of supervision could have prevented" (***Swan v Town of Brookhaven***, 32 AD3d 1014; ***Calcagno v John F. Kennedy Intermediate Sch.***, 61 AD3d 911, 912, 877 NYS2d 455, 457 [2d Dept 2009]; ***Fraioli v City of New Rochelle***, 6 AD3d 657, 775 NYS2d 559 [2d Dept 2004]). Thus, the School District's alleged negligent supervision was not the proximate cause of Eliezer's injury.

Furthermore, the School District established entitlement to judgment as a matter of law with respect to the plaintiffs' claim that the locker was a defective condition. To make a case of negligence based upon a defective condition, there must be evidence that establishes that the defendant either created the defective condition or had actual or constructive notice thereof, such that the defect was apparent, visible, and existed for a sufficient length of time to allow the defendant time to discover and remedy the defect (***Moss v JNK Capital Ltd.***, 85 NY2d 1005, 631 NYS2d 280 [1995]; ***Gordon v American Museum of Natural History***, 67 NY2d 836, 501 NYS2d 646 [1986]; ***Cafiero v Inserra Supermarkets***, 195 AD2d 681, 599 NYS2d 342 [3d Dept 1993]). The School District established its prima facie entitlement to summary judgment by demonstrating that it had no actual or constructive notice of the allegedly defective locker (*see* ***Goetz v Town of Smithtown***, 303 AD2d 367, 755 NYS2d 669 [2d Dept 2003]; ***Sinto v City of Long Beach***, 290 AD2d 550, 736 NYS2d 700 [2 Dept 2002]).

Eliezier testified that he attended gym class several times per week, and had walked in the locker room on multiple occasions. He observed that the locker that he came into contact with on the day of the accident was tied with a zip tie. He further testified that the zip tie was used so that the locker could remain closed when it was not in use. Moreover, Eliezer's gym teacher, and the chief custodian at Dawnwood Middle School averred that there had been no other similar incidents involving the subject locker or any other lockers at the school. Inasmuch as the School District met its burden as the movant, the burden shifted to the plaintiffs to produce evidence in admissible form sufficient to establish the existence of a material issue of fact (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]).

In opposition, the plaintiffs assert that the School District failed to comply with Court rules that require a conference prior to filing any motion. The plaintiffs argue that the School District's failure warrants dismissal of the summary judgment motion. In reply, the School District asserts that inasmuch as the subject motion is a post-note motion, no conference is required. The plaintiff's position is meritless. The Court rules are clear that no conference is required prior to filing a post-note motion.

Alternatively, the plaintiffs argue that the School District breached its duty of care to Eliezer. The plaintiffs submit only an attorney affirmation to support its position. It is well established that the affirmation of an attorney, who had no personal knowledge of facts, has no probative value and is insufficient to defeat a motion for summary judgment (***Marietta v Scelzo***, 29 AD3d 539, 540, 815 NYS2d 137, 138 [2d Dept 2006]; ***Acheson v Shepard***, 27 AD3d 596, 597, 811

NYS2d 781, 782 [2d Dept 2006]; ***Demacos v Demacos***, 142 AD2d 546, 529 NYS2d 904, 904 [2d Dept 1988]). Inasmuch as the plaintiffs have failed to establish the existence of a material issue of fact, the School District's motion for summary judgment dismissing the complaint is **granted**.

Dated: January 23, 2018
Riverhead, New York

WILLIAM G. FORD J.S.C.

__X__ FINAL DISPOSITION ____ NON-FINAL DISPOSITION