

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D18351
C/kmg

_____AD3d_____

Argued - January 14, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
DANIEL D. ANGIOLILLO
RUTH C. BALKIN, JJ.

2007-04268

DECISION & ORDER

Michael Guzman, etc., appellant, v New York
City Department of Education, respondent.

(Index No. 28852/04)

Kagan & Gertel, Brooklyn, N.Y. (Irving Gertel of counsel), for appellant.

In an action to recover damages for personal injuries, the plaintiff appeals from an order and judgment (one paper) of the Supreme Court, Queens County (Eliot, J.), entered April 11, 2007, which granted the defendant's motion pursuant to CPLR 4401, made after the close of the plaintiff's case, to dismiss the action for failure to prove a prima facie case, and dismissed the complaint.

ORDERED that the order and judgment is affirmed, without costs or disbursements.

The plaintiff, an infant, was injured when a door at his school closed on his thumb as he was exiting the school with the rest of his class. At trial, after the plaintiff and his mother testified, the plaintiff rested and the defendant moved to dismiss the action for failure to prove a prima facie case. That motion was granted, and the plaintiff appeals. We affirm.

While a school is obligated to adequately supervise the students in its care and may be held liable for foreseeable injuries proximately related to inadequate supervision, it is not an insurer of the safety of its students (*see Mirand v City of New York*, 84 NY2d 44, 49). Here, the plaintiff failed to produce any evidence of the defendant's negligence which was a proximate cause of the

March 11, 2008

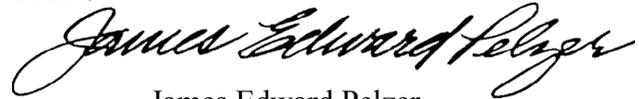
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plaintiff's injury. The general assertion that had there been more or better supervision, the injury could have been prevented, cannot suffice to make a prima facie case (*see Walsh v City School Dist. of Albany*, 237 AD2d 811).

RIVERA, J.P., LIFSON, ANGIOLILLO and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court