

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

D29705
C/ct

_____AD3d_____

Submitted - December 14, 2010

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2009-02831

DECISION & ORDER

Amy Guterman, et al., appellants, v Board of Education
of City of New York, et al., respondents.

(Index No. 14068/04)

Glinkenhouse, Floumanhaft & Queen, Cedarhurst, N.Y. (Alan Queen of counsel) , for appellants.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Pamela Seider Dolgow and Suzanne K. Colt of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Queens County (Kerrigan, J.), dated February 4, 2009, as granted that branch of the defendants' motion which was for summary judgment dismissing the complaint insofar as asserted against the defendant Board of Education of the City of New York.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The injured plaintiff, a teacher at Louis Armstrong Middle School in Queens, allegedly was struck by a stairwell door when a student suddenly appeared and opened the door. Prior to the accident, the injured plaintiff had used the same door without incident on more than 10 occasions and she had never complained about the door. The defendants established the prima facie entitlement of the defendant Board of Education of the City of New York (hereinafter the Board) to judgment as a matter of law by demonstrating that the Board did not create the alleged hazardous condition of the

January 11, 2011

Page 1.

GUTERMAN v BOARD OF EDUCATION OF CITY OF NEW YORK

subject door or have actual or constructive notice of the alleged hazardous condition (*see Fontana v R.H.C Dev., LLC*, 69 AD3d 561, 562; *Hunter v Riverview Towers*, 5 AD3d 249). In opposition, the plaintiffs failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

Accordingly, the Supreme Court properly granted that branch of the defendants' motion which was for summary judgment dismissing the complaint insofar as asserted against the Board.

MASTRO, J.P., RIVERA, AUSTIN and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court