

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

D30572  
Y/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - March 3, 2011

MARK C. DILLON, J.P.  
JOHN M. LEVENTHAL  
CHERYL E. CHAMBERS  
LEONARD B. AUSTIN, JJ.

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2010-04940

DECISION & ORDER

Christopher James Arceri, etc., et al., respondents, v  
Smithtown Central School District, appellant.

(Index No. 19640/08)

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Ahmuty Demers & McManus, Albertson, N.Y. (Brendan T. Fitzpatrick and Louisa Chan of counsel), for appellant.

Siben & Ferber, Hauppauge, N.Y. (Steven B. Ferber of counsel), for respondents.

In an action to recover damages for personal injuries, etc., the defendant appeals from an order of the Supreme Court, Suffolk County (Tannenbaum, J.), dated April 20, 2010, which denied its motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly denied the defendant's motion for summary judgment dismissing the complaint. The defendant failed to establish, *prima facie*, that the infant plaintiff was engaged in age-appropriate activity at the time of the accident (*cf. Troiani v White Plains City School Dist.*, 64 AD3d 701; *Newman v Oceanside Union Free School Dist.*, 23 AD3d 631), that he was adequately supervised (*see Ferrill v Board of Educ. of Cent. School Dist. No. 1*, 6 AD2d 690), and that it maintained the playground in a reasonably safe condition (*see generally Miller v Kings Park Cent. School Dist.*, 54 AD3d 314; *Botti v Seaford Harbor Elementary School Dist. 6*, 24 AD3d 486). Since the defendant failed to satisfy its initial burden of proof, it is unnecessary to analyze the

March 29, 2011

Page 1.

ARCERI v SMITHTOWN CENTRAL SCHOOL DISTRICT

sufficiency of the plaintiffs' opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851).

DILLON, J.P., LEVENTHAL, CHAMBERS and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court